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APPENDIX - VOL. II

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1589

GENERAL ELECTRIC COMPANY,
Petitioner,

v.

MARTHA V. GILBERT,
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC, *et al.*,
Respondents.

No. 74-1590

MARTHA V. GILBERT,
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *et al.*,
Petitioners,

v.

GENERAL ELECTRIC COMPANY,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 17, 1975
CERTIORARI GRANTED OCTOBER 6, 1975

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REDIRECT EXAMINATION

BY MS. WEYAND:

Q. I believe you said it was statistically true that the complications arising from the pill are less in number than the women who get pregnant. You emphasized –

MR. BATTLE: Excuse me, Your Honor, I don't think that was either the answer or the question.

MS. WEYAND: All right.

MR. BATTLE: Women that get pregnant are less the number of complications.

BY MS. WEYAND:

Q. Less the number of complications of pregnancy.

You emphasized the word "statistically." Am I correct in inferring that you thought there was something else to
411 be said besides merely statistics on that subject?

A. I think that just as a matter of clarification that a complication that results from the taking of the pill and a complication that results from being pregnant are in themselves 100 percent important to that particular individual.

Statistically they compare the number of complications with dire circumstances related to the taking of the pill with those complications of pregnancy with dire circumstances. When you compare it in that light the incidence is much lower among the girls who are taking the pills, as I understand it. And this is the argument that is proposed by these people.

Q. Do you think there are substantial consequences that are not classified as dire consequences? A. I think in most instances except where there has been documented statistical or evaluation of a particular segment of people who have taken these agents, there are many of these so-called complications are missed that are not recorded and they are not reportable.

The patient who has been taking the pill and suddenly dies as a result of a thrombo-embolism, I think this is dramatic, it becomes reportable, and usually a coroner's case. And these get entered into the statistics.

412 The patient who develops positive birth control pills suppression, ovulation suppression syndrome, I don't know that we are reporting these.

There are people who are interested in them that are investigating this phenomena, these complications.

We are slowly picking up more and more of these adverse effects. And if you are interested in this subject I think you tend to read more on this subject, and I am interested in the complications. That is not to imply that we do not give the pill, and we still use it with medical indications and we offer contraceptive advice, we usually give the patient her opportunity to select what she and her husband would like to use.

Q. I take it that 100 percent of your pregnant patients have a period of hospitalization, do they not? A. We use the term pregnancy here and we keep talking about the normal pregnancy, but there are abnormal pregnancies.

Q. They all go to the hospital when they deliver, you have said? A. If we are talking about a normal I would say that 100 percent of these patients go to the hospital. Even if they delivered in a rescue squad, they still go to the delivery table and are examined and kept there for three or four days, yes.

413 Q. So when you said 90 to 95 percent of the pregnant women suffer no disease, you did not go back to your definition of disease, did you? A. No.

If I relate to discomfort aside from the normal state of well-being I probably did not relate that.

Q. 100 percent of them have suffered discomfort, did they not? A. I would say –

MR. BATTLE: I have tried not to object, but that is awfully leading.

THE COURT: She can lead him.

MR. BATTLE: It is the testimony.

THE COURT: If she can lead him he deserves it. I don't think she will lead him very far.

THE WITNESS: If you are referring to the fact that they required anesthetic for the time of the delivery to relieve the pain and discomfort, the actual delivery process and the episiotomy, or they required medication and/or anesthetic during their labor, then the answer would be yes.

MS. WEYAND: That is all the questions I have.

THE COURT: Dr. Forrest, I want to be sure I have

414 this straight. I am not sure of the materiality.

Did I understand you to say that more than 50 percent of your patients, that is of your working patients, stayed home after the first pregnancy and don't return to work?

I know you said it because I wrote it down. Did you mean that?

THE WITNESS: No – here again, Judge, I am trying to say that of the patients that I see, and incidentally I have not made a real effort to ask patients, "Do you work, not work, and so forth," the impressions that we get is through conversations with the patients when they say, "I can't get here because they don't want me to come, or I lose too much time at the office." What I am trying to say is of the patients that we see with their first pegnancy, perhaps 50 to 60 percent of these patients are working.

THE COURT: I understood that.

THE WITNESS: Now, we see other patients who come in with their second pregnancy or they are old patients who come back three or four years later. And I think

that there is – that it reduces to probably as low as 25 percent.

I am not saying that the patient that I delivered 50 percent of them never go back to work.

THE COURT: That is what I wanted to know.

415 THE WITNESS: No, because I don't know this.

THE COURT: All right.

Did the Court's questions prompt any further inquiries from counsel?

MR. BATTLE: Just in regard to those questions, Doctor.

THE COURT: It must have been more material that I had given it credit for, Mr. Battle, but you go ahead.

MR. BATTLE: In that case I have no further questions.

RECROSS EXAMINATION

BY MR. BATTLE:

Q. Seriously, you do, in discussing the pre-natal treatment and attention, typically find out whether the lady works or whether she is a housewife, or what the nature of her activities are, don't you? Isn't this part of the history that you want to have in prescribing? A. I wished I could tell you, Mr. Battle, that I inquire of that specifically. I do not.

If it comes to my attention, but I am not really hep on it. I don't go out and say, "Do you work?"

Q. Well, the thing that sort of grabs me is the fact that, as I take it, for 20 years or so, and I knew this to

416 be true before you gave the facts, you see thousands of women a year and deliver thousands of babies a year.

A. Not thousands.

Q. No? A. Not thousands a year, sir.

Q. I am sorry. Hundreds. A. I would accept hundreds.

Q. And you said on direct examination, and it wasn't particularly surprising to me, I just wanted to develop it

somewhat, that of the first pregnancy you gathered about 50 or 60 percent were working women, that is your –

A. Yes.

Q. – impression, is it not? A. Yes.

Q. And over the years of experience I take it you were using that experience, not just the last year, but over the years of experience in the state of second pregnancy you gathered by the same type of information that about 25 percent were working women.

Now, wouldn't a fair inference be that more than 50 percent of your patients do not return to work after the first child is born? A. I can't answer that because she may only have one child and return to work and I never

417 see her again.

I am comparing patients who come in for pregnancy rather than a one family – pregnant one family. If you asked me my general impression I would say that because of the nature of our practice, which many of these people who come, I say many, a considerable number of them would come to us who have problems in becoming pregnant; and I find out all of these things like do you work, where do you work, and so forth because with these people I want to know these things.

But for the average girl who drops in, or the person, I don't like to use that word "drops in," but who comes in and just going through the course of talking to her, it usually will come out in her conversation, but I don't specifically say, "Do you work?"

Q. I see.

All right. That is all.

THE COURT: Miss Weyand.

MS. WEYAND: Nothing further.

THE COURT: You may step down.

Unless I hear an objection Dr. Forrest will be excused.

Thank you, sir.

(The witness stood aside.)

* * * * *

419 Feb. 23, 1973

CITIZENS' ADVISORY COUNCIL OF
THE STATUS OF WOMEN
Room 1336, Department of Labor Building
Washington, D.C. 20210

Mrs. Catherine East has been executive secretary of the Citizens' Advisory Council on the Status of Women since its establishment on November 1, 1963, by Executive Order 11126. The primary functions of the Council, whose members are appointed by the President, is to study issues relating to status of women and to recommend needed changes to the President, Federal agencies, and other groups.

The Council has made recommendations on a variety of subjects, including most recently the Equal Rights Amendment, job-related maternity benefits, and Need For Studies of Sex Discrimination in Public Schools. Earlier recommendations to the Equal Employment Opportunity Commission on the interpretation of Title VII were adopted by the Commission and upheld by the courts.

As the chief executive officer Mrs. East has been responsible for providing staff assistance to the Council, including agenda and speakers for meetings and responsibility for preparation of staff papers and reports. For some studies she has arranged for part-time details of experts from various parts of the government. In other cases she has done the research and prepared the staff papers for the Council.

She served as technical secretary for the Federal Employment Committee of the President's Commission on the Status of Women from March 1962 until November 1963, with similar responsibilities for Federal employment only.

In the Civil Service Commission where Mrs. East was employed in public presonnel management for the preceding 23 years, she was engaged primarily in general staff work, researching various topics and preparing policy positions for the Commissioners. She drafted laws, regulations, executive orders, bill reports, testimony, and instructions to agencies to carry out Commission policies. Among the wide variety of topics on which she worked were conflict of interest laws, employment of military personnel in the Federal service, and past and future relationship of the Civil Service Commission to the President.

She played a major role in designing and implementing changes in the Federal personnel management system required by World War II and the Korean war and post-war readjustments.

She has been a speaker on legal, economic, and social status of women before such groups as the American Management Association Annual Personnel Conference, the Southern Newspaper Publishers Association Foundation Seminar for Southern journalists, Delaware Chamber of Commerce, the New York State Psychological Association Conference on Women in the Work Force, the National Conference of

420 Administrative Women in Education, the National Convention of the Intercollegiate Association of Women Students. She was an expert witness in the case of *NOW v. Pittsburgh Press* and *Cohen v. Chesterfield County School Board.*

She testified before the Select Committee of the House of Lords of the British Parliament on proposed legislation to prohibit sex discrimination in employment and education. During this trip she spoke on status of women in the U.S. at conferences at the University of London, University of South Wales, Glasgow City Council Chambers, British House of Commons, and appeared on several BBC television shows.

She testified on the Equal Rights Amendment before the Judiciary Committees of the House and Senate of the Legislature of South Dakota and before the joint House-Senate Judiciary Committee of the Legislature of Connecticut.

February 16, 1973

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421 MATERIALS ON WHICH I WILL RELY

Recommendation on Job-Related Maternity Benefits of Citizens' Advisory Council on the Status of Women.

Report of the Subcommittee on Maternity Benefits to the Interdepartmental Committee on the Status of Women, November 1969.

Contract of the Department of Labor with Labor Local 12 signed December 18, 1970.

Survey of Use of Leave for Maternity Purposes in Employment Standards Administration, Department of Labor (if completed in time).

"Childbirth and Child Rearing Leave: Job-Related Benefits," New York Law Forum, Vol. 17, No. 2, 1971.

Guidelines of States of Washington and Wisconsin.

Current Population Reports, Bureau of the Census, "Birth Expectations and Fertility: June 1972," Series P-20, No. 240, September 1972.

Personnel Management Policies and Practices, Report Bulletin 25, June 6, 1972, Prentice-Hall.

Unpublished Data from Survey of Use of Sick Leave by Federal Employees - 1961 leave year.

February 22, 1973

422 * * * * *

CATHERINE EAST was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

THE COURT: If you would move those for a moment so the marshal can put the table up.

THE WITNESS: Oh! Thank you.

DIRECT EXAMINATION

BY MS. WEYAND:

Q. I show you the vitae of curricula which has been filed.

THE COURT: Miss Weyand, stand behind the lectern, please.

The marshal will pass papers to the witness.

THE WITNESS: Yes, I did.

BY MS. WEYAND:

Q. Did you prepare that?

Are there any changes necessary to bring it up to date?

A. Well, yes, for this purpose I suppose so.

I testified before several other state legislatures on the Equal Rights Amendment, if that is significant.

THE COURT: Let me get the witness' name. I am

423 sorry. I didn't get it.

MS. WEYAND: I am sorry.

THE WITNESS: Catherine East.

THE COURT: Thank you, ma'am.

MS. WEYAND: She has filed a biographical sketch with the Court, as you may recall, and I assume the same question would apply here as to whether there is need to qualify her further.

THE COURT: In what field are you qualifying the witness?

MS. WEYAND: As an expert in the field of socio-economic effects of employment of women, the problems of women in the social and economic field.

THE COURT: Does anybody wish to examine the witness on her qualifications?

If not she is qualified.

MS. WEYAND: Thank you.

BY MS. WEYAND:

Q. What is your present position? A. I am Executive Secretary of the Citizens Advisory Council on the Status of Women.

Q. What is the Citizens Advisory Council on the Status of Women? A. It is an advisory group of 20 members
424 appointed by the President to advise the Federal Government and private groups, and anybody that wants to listen, on action that might be taken to improve the status of women.

Q. Who are its members? A. 20 private citizens appointed by the President who serve without pay and serve without term of office.

Q. How long have you held your present position?

A. For 11 years.

Q. What are the duties of your position? A. My duties are to help in preparing the agenda for the Council and arranging for speakers, in preparing staff papers, doing research on the topics they are concerned with, writing the minutes, speaking as requested on the status of women to various groups and before public bodies.

Q. I believe you stated that there were some legislative bodies before whom you have testified in addition to those listed in your biographical sketch.

Would you state what those are? A. Yes. I testified before the West Virginia Legislature, a House Committee, House Judiciary Committee, and before the Illinois Senate Judiciary Committee on the Equal Rights Amendment.

Q. Have you testified before legislative bodies outside
425 the United States? A. Yes. I testified before a Select Committee of the House of Lords on legislation to prohibit discrimination because of sex in employment and education in England.

Q. When did this testimony take place? A. In November of 1972.

Q. Did the Citizens Advisory Council on the Status of Women take any position with respect to disability benefits for periods of absence from work due to childbirth and complications of pregnancy? A. Yes.

The Council was quite interested in this topic.

The Council appointed by President Johnson had taken it up in 1968. And at that point they recommended the establishment of a Federal Temporary Disability Insurance System that would provide for compensation for loss of income for all employees who lost time because of temporary disabilities, including pregnancy.

When it came up again after President Nixon had appointed the present Council members and the Council heard witnesses from an insurance company, from the Civil Service Commission from the Equal Employment Opportunity Commission, from the Office of Federal Contract Compliance,
426 and the Labor Department. I did some research for them on practices in foreign countries and a little on what was done in this country.

We found that there were a wide – I say we, I am speaking of the Council for whom I was doing the staff work– found a wide variety of practices. In the Federal Government and in the Railroad Retirement Board, we found that leave for childbirth was treated as a temporary disability and the employees used their sick leave, vacation leave, and leave without pay as necessary; and that they had reemployment rights.

We found that some other employers required women to take leave without pay or to resign when they became pregnant.

Some of them had to quit early in the pregnancy. They were not permitted to use sick leave or personal leave or vacation leave, whatever leave might be available, or didn't have temporary disability insurance coverage.

Most apparently had no reemployment rights except preference for vacancies.

We were kind of surprised; it seemed some employers almost designed their practices to force women to quit
427 work at the time they had children, and apprently some of the other practices went back to the times when pregnancy was considered obscene and when all women were expected to stay home and take care of their children.

It seemed to have been designed by upper middle-class men who, you know, were trying to get all women, or hoped or seemed to assume all women, could follow the practices of their wives.

This appearance has since been confirmed by experiences I have had.

I have spoken a great deal to businessmen, including the American Management Association Personnel Conference, and I always raised this topic when I did.

And several of the employers, these are industrial relation experts, they are not just anybody, Vice-Presidents for Industrial Relations or Personnel Directors, have asked me shouldn't women be encouraged to stay home? Why should you have policies that would permit them to come back? I told them that was none of their business whether the wife stayed home to take care of the children or not. That was between the husband and the wife.

We found that five states had temporary disability insur-
428 ance laws. New Jersey, Rhode Island, New York, California, and Hawaii.

These laws provided income replacement for covered employees while they were temporarily disabled.

At that time only New Jersey and Rhode Island covered pregnancy, and both had limitations.

Recently Hawaii has amended its law to cover periods of disability because of pregnancy. And I think to some extent because of the Council's proposal and because of the EEOC Guidelines.

And California's exclusion of pregnancy from its law has recently been declared invalid under ther 14th Amendment.

We found that four states, I guess, are or are going to have to include pregnancy.

New York also has a bill before it to include pregnancy, and the women's groups up there are working hard to get that exclusion repealed.

We found that European countries and Great Britain generally have national social security systems that provide income maintenance during temporary disabilities and include time off for childbirth and complications of pregnancy as a part of the system.

We found in looking into why this wide variety of practices and why pregnancy was excluded from benefits normally
429 provided other disabilities, that it had been justified on the basis that pregnancy is distinguishable from all other disabilities because it is voluntary. I put that in quotes. Or it is a "normal physiological condition." Since the Council membership is made up of 20 women, some of whom are of religious faiths that forbid effective birth control methods or abortion, the Council couldn't believe that the voluntary bit had been advanced very seriously, but apparently it has been.

The normal physiological condition justification was puzzling. If pregnancy is normal is non-pregnancy abnormal?

One would think that a normal physiological condition would be one that could continue for a lifetime with comfort. Constant pregnancy certainly would not be conducive to health or comfort.

In any event, the Council was concerned with employment and from the standpoint of employment absence for childbirth had all the characteristics of other temporary disability.

THE COURT: Just a moment, please, ma'am.

MR. KAMMHOLZ: Your Honor, I apologize for the interruption in the dialogue, I was waiting for the end of
430 a sentence but I had difficulty in interrupting at that point in time.

We note at counsel table that the witness appears to be reading a statement. This apparently is a prepared statement. It is not an answer to the question, and indeed –

THE COURT: I will have to ask you now to be a little bit more specific as to your objection.

MR. KAMMHOLZ: We object on the ground that the witness is not testifying but is reading a statement.

THE COURT: Well, I think the objection is well taken.

At the risk of being one of those middle-class chauvinistic males, it does appear to be argumentative.

Suppose you address questions to the witness.

You may refer to such notes as you may have.

THE WITNESS: I am sorry. I made some notes. I didn't want to forget anything.

THE COURT: I have no doubt that what you forget Miss Weyand will remind you of.

BY MS. WEYAND:

Q. What position did the Council take? A. The Council concluded that pregnancy is, that the time the childbirth, the period that a woman has to be off for
431 childbirth is a temporary disability, that it had all the characteristics of it.

That a woman is temporarily unable to work because of her physical condition. She is under the care of a doctor.

She is likely to go to the hospital. She is in need of replacement of income, as great a need as for any other disability, and possibly greater since there is going to be a new addition to the family.

So we concluded that it met all the characteristics of other temporary disabilities as far as employment is concerned.

That is what we are dealing with is employment. And that it is one and that is the way it ought to be treated.

We made that recommendations.

We also recommended that women should not be given any greater advantages for pregnancy than for any other temporary disability.

We felt this would be unfair to people, both women and men, who had other temporary disabilities.

At the time that we took this up we were considering a proposal by the Civil Service or by a committee, not by the Commission, by a committee to recommend legislation that would have given women in the Federal Government
432 a greater benefit, greater leave for pregnancy that for other temporary disabilities. We disagreed with this and recommended no greater benefits because we felt the essence of non-discrimination was to treat each person as an individual and that if you started having different treatment for pregnancy you would inevitably have some situations where a woman who was off because of childbirth would be treated better than some other employee similarly situated insofar as length of service, and so on was concerned would have another disability and we thought they were identical and should be treated that way.

Q. Did the Council issue a published statement representing its position? A. Yes, we did.

Q. What was that called and when was that issued?
A. I will look it up. I can't remember times.

Q. I will show you Plaintiffs' Exhibit 80 and ask you if that is a copy? A. Yes, Job-Related Maternity Benefits, November, 1970.

Q. Thank you.

Now, in connection with preparing this report, did you get some figures on the cost to industry of such a pro-
433 gram? A. Yes, we did. This Council is made up of good Republican women, by and large, many of them in business, and they were not wanting to do anything that was out of the question.

We had a Mr. Hunt from the Aetna Insurance Company. He was designated by top officials to come speak to us and to furnish us with data on costs of various things.

He spoke to the Council before they took a position. And as a resuit of this statement I prepared–

MR. KAMMHOLZ: Just a moment, Your Honor. I object. Hearsay.

THE COURT: Overruled. As a result.

THE WITNESS: As a reuslt I prepared a paper which we cleared with Mr. Hunt. I prepared a paper based on his testimony and then sent it to him at Aetna for clearing.

MR. KAMMOLZ: Note the objection, Your Honor, based on hearsay.

MS. WEYAND: We will provide the documentation.

THE COURT: Please, you must address yourselves to the bench. The objection is well taken as to the last
434 part of the answer.

MS. WEYAND: I would like to show the witness Plaintiffs' Exhibit 81, please, and ask you if that represents the figures you have obtained from Aetna with respect to the cost?

THE WITNESS: Yes, it does.

BY MS. WEYAND:

Q. Did you verify with Aetna the accuracy of the figures?

THE COURT: I am sorry. Just a moment. You said Plaintiffs' Exhibit 81?

MS. WEYAND: Yes.

THE COURT: It is described on your list of exhibits as Citizens Advisory Council on the Status of Women information from insurance industry related to coverage of childbirth. Is that what you are referring to, Miss Weyland?

THE WITNESS: Yes.

MS. WEYAND: Yes.

THE COURT: All right. I just wanted to be sure.

BY MS. WEYAND:

Q. And this was no document to which you referred when you said you had obtained information from the insurance industry included in your report, is that correct?
435 A. Yes, sir. Yes, ma'am.

Q. I would like to have marked for identification as Plaintiffs' Exhibit 121 a letter which I would like to show you. It is a letter which is from James Hunt to Mrs. Catherine East, dated June 30, 1971.

MR. KAMMHOLZ: Your Honor, may I go back to the Plaintiffs' Exhibit 81? Mr. Strauss, who had dealth at great length with counsel advises me that he had not received a copy of it, and I must confess that I have difficulty in identifying and relating this document to what has been handed the witness, which I have not seen.

THE COURT: Didn't counsel meet as required by the pre-trial order?

MS. WEYAND: Yes, And I sent him over a list of all exhibits and he marked off the ones which he said were

missing from his set and I sent them over.

I am very sorry if this didn't appear in that group.

THE COURT: I will give you an opportunity before cross-examining to look at it.

Go ahead, Miss Weyand. Let's see if we can't move
436 along now.

MS. WEYAND: Yes.

I am handling you the document marked for identification as Plaintiffs' Exhibit 121 and ask you if that is a letter you received from Mr. Hunt confirming the figures?

THE COURT: Just a moment.

THE WITNESS: Yes, it is.

MR. KAMMHOLZ: May it please the Court - -

THE COURT: All right, sir.

MR. KAMMHOLZ: Plaintiffs' exhibit list does not relate to a 121.

THE COURT: I know.

MR. KAMMHOLZ: We object.

MS. WEYAND: Mrs. East was -- did not provide this to me until today when she testified at another hearing we had a week ago, and at that time counsel, the Stromberg-Carlson case, objected because she did not have confirmation and she said I have a letter, and I will bring it down, and the first time I saw it was today, was that she got a letter from Mr. Hunt confirming the figures here.

THE COURT: I am going to sustain the objection.

But counsel for the defendent must recognize that you
437 are going to get treated the same way in the event you come across any exhibits you would like to offer.

The objection is sustained.

It was not filed pursuant to the pre-trial order.

MR. KAMMHOLZ: Your Honor, may I?

THE COURT: Change your mind, did you?

All right, sir.

MR. KAMMHOLZ: I would like the record to be clear that we object to 81 on the ground that it is hearsay. Perhaps the record already reflects.

THE COURT: Let's not go through those objections. They are all in the record.

BY MS. WEYAND:

Q. Do you have any information as to the extent to which it has been the practice of pregnant females in the past to continue working right up to delivery if their doctors advise that this was approved by them? A. Well, we have had a great deal of difficulty in finding any employers that have permitted this. Even the Federal Government that has – that does permit the use of sick leave, recommends that agencies require women to be off four weeks before and eight weeks after childbirth. And of
438 course the complaints that the EEOC gets are complaints from employers who do this.

And I have tried, I have made a number of telephone calls, and I have tried to find employers who did allow women complete freedom and to get data on it. We found a few who do.

I think – can I name them?

Q. Yes, if you will, please. A. Okay.

Xerox and IBM, Kline-French Drug Company in Philadelphia, I believe that is the name.

The Labor Department of the Federal Government.

Now, I want to make it clear, I dont' have the staff to make any kind of systematic surveys. These are things I have run across when I talk to people. The Cummings Company in Ohio and a Mount Zionist Hospital in Miami, Florida.

I checked with all of them to see if they had any data and how long women did stay off when they were given freedom to choose, and they don't.

It seems that the greater the extent to which they treat it like any other temporary disability the less accessible the data is.

I found that in the Labor Department if I want to
439 make a survey of even on administration I would have to go through every leave record for sick leave, for leave of any kind, and try to pick out those that look like they might have been long enough for a baby, and then check and see if they had and how long they were off.

And the same thing apparently was true in the other companies. I called and asked if they had data and they said they didn't and said it would be difficult to compile. So I have been unable to get any data as to how long women will stay off. I suspect it will be some time before we know.

The women have been conditioned by these requirements to think they, you know, should be off, that it is proper to be off that long, and in many cases I think there is some ridicule when they are not, even in professional circumstances.

MR. KAMMHOLZ: Your Honor, I object. This is speculative, hearsay, nonexpert testimony.

THE COURT: I think it is a little out of the witness' field of expertise.

MR. KAMMHOLZ: I move to strike.

THE COURT: The objection is well taken.

BY MS. WEYAND:

Q. When you mentioned these companies, are these
440 companies that paid sickness and accident benefits on the same basis for a disability arising from pregnancy and childbirth? A. Yes. They tell me that they are completely complying with the EEOC Guidelines, that they are treating it like any other disability and making payments and letting women decide, with their doctors' concurrence.

Q. All of these are companies that do have a payment of what we call sick pay for disabilities of all sorts including those arising from pregnancy? A. Yes. They either have sick leave or have temporary disability insurance coverage or both.

Q. And they treat –

THE COURT: Just a moment, please.

Yes?

MR. KAMMHOLZ: Your Honor, this line of interrogation has elicited hearsay answers.

THE COURT: I think I can separate it.

MR. KAMMHOLZ: I dislike being a constant objector, particularly since I am a male, but may I have a standing objection?

THE COURT: Yes. Yes, of course.

MR. KAMMHOLZ: Thank you, Your Honor.

THE COURT: I will try to separate the hearsay as
441 best I can.

BY MS. WEYAND:

Q. Are there figures available from the Federal Government with respect to the extent to which women are off and return to work? A. Yes.

Several years ago, I will give you the exact date in a minute, the Civil Service Commission made a survey of, I believe, five agencies that they considered representative on maternity leave. It is called the Report of the Subcommittee on Maternity Benefits to the Inter-departmental Committee on the Status of Women, 1969. And in there they reported on a survey they had made. Here it is. Five agencies. And one of the bits of data they collected was how long the women were off.

And they found it varid – I am sorry, it was six agencies. The shortest period of time, that average median,

the shortest median period was 11 weeks for the Labor Department. And that was about a year after the Labor Department started letting the women choose how long they would be off.

Q. What year was that? A. That the Labor Department made this change? 1968.

442 Q. These figures are '69 figures, is that correct? A. No, I am sorry. This is 1967. This was published in '69, but the survey was not. 1967 figures and the Labor Department had made the change in 1966.

Before that the Labor Department had required the women to be off six weeks before and eight weeks after childbirth.

Labor – the median there was 11 weeks.

Q. That is the Department of Labor? A. Department of Labor. State Department 11.5. Internal Revenue Service 12. Veterans Administration 14. Social Security 17.

– all these agencies who had employees doing substanially the same kind of work. The only one that had any with heavy-duty workers was the Post Office Department. (page 21) And the heavy-duty workers only took off 16 weeks in the Post Office Department (page 27) although in Social Security, which is entirely clerical, it was 17.

So my conclusion from that would be that the social climate in the agency had a great deal to do with how long the woman took off, and also the requirements she be off for a particular period of time.

443 Q. The study also shows when they came back, did they? A. This was a total of how many came back, you mean?

Q. Yes. A. Yes, it showed that 21.3 percent terminated or resigned while they were on leave. At the time this study was completed eight per cent were still on leave. 70.7 had returned.

Three per cent had resigned after return.

It is not clear any place in this study whether those resignations after return had anything to do with the pregnancy or not.

But in any event, the most conservative estimate would be that 70.7 percent had returned and eight per cent were still on leave.

Also showed that although this was the general loss rate two agencies had a loss rate of 40 per cent.

THE COURT: All right.

MR. KAMMHOLZ: Your Honor, so the record is clear, my objection stands, I take it, on the ground of hearsay on the grounds of conclusionary statements by the witness, and on account of nonresponsiveness to the questions propounded.

444 THE COURT: Well, the proper foundation has not been laid.

I think it would be, and I don't want to run the risk, but much of the evidence you are getting in is a very peculiar way to do it, different from the rules of evidence, and you run the risk.

MS. WEYAND: I thought when she was qualified as an expert it covered. I will go back.

I understood you wanted to expedite matters.

What participation did you have in investigating the facts in regard to how long women are off?

THE WITNESS: This study.

BY MS. WEYAND:

Q. As part of your present position what did your investigation reveal? A. Well, at this time that this study was done the Interdepartmental Committee on the Status of Women was also in existence and functioning. And this study was done at the request of the Interdepartmental

Committee on the Status of Women, of which I was also Executive Secretary.

Q. So you were Executive Secretary of the agency that made this study? A. Of the committee that makes it, and I also planned –

445 Q. Collecting the data? A. Not collecting the data. That was done by the agencies. The agencies under instructions from the Civil Service Commission collected the data.

Q. But you assessed the – A. It was done at the request of the Interdepartmental Committee.

Q. You have participated in requesting the various six Government agencies which you mentioned to provide the data? A. I participated in the committee. I didn't do any of the work. It is not my job to do any of the work.

Q. You supervised the people that did the work in connection with it as Executive Secretary, is that correct? A. I wouldn't call it supervising. The Executive Secretary has a kind of an anomalous position. I was in touch and I contributed and I saw to it it was done because the Interdepartment Committee wanted it done, but an Executive Secretary ordinarily doesn't supervise the group that is carrying out the instructions of a subcommittee that is carrying out instructions.

Q. For the subcommittee you were the person who executed the task of collecting the material in terms of

446 saying that it was collected and prepared, is that correct? A. If they hadn't done it I would have followed up to see that they did.

Q. You got it done, yes. And it was your job to get this? A. Yes.

Q. This material collected? A. Yes.

Q. You checked to see how accurate it was, did you? A. I had no way of checking it.

The agencies furnished this data. The Civil Service Commission asked each agency to keep a record for that period of time for each woman on maternity leave and turned it in to the Civil Service Commission.

They have a research staff, duly competent to collect data, analyze it and tabulate it.

I worked with the Civil Service Commission 20 years. So I was knowledgeable as to their competence. And I fully relied on their research department to do this.

I have no doubt the data is as accurate as the agencies furnished, and I have no reason to think the agencies would, you know, jimmy the data in any way.

Q. This was the data that was furnished by the agencies? A. Yes, furnished by the agencies and tabulated

447 and analyzed by the Civil Service Commission.

Q. And you were Executive Secretary? A. Of the Interdepartmental Committee on the Status of Women and the Chairman was one member of that, of the Civil Service Commission.

Q. And the figures you have read represent what was furnished you by the agencies? A. Official publications. Anybody can get it, a public document.

It is the only thing I know of that has any information about how long women stay off. And of course here you have to keep in mind that these agencies, except for Labor, I think require them to stay off six weeks before and eight weeks afterwards.

Q. Do these agencies provide sick leave for the time that the woman is absent? A. The Federal Government's sick leave system provides that it can be used for maternity.

Q. That is for any period that the woman is off because of pregnancy or childbirth? A. Childbirth, that's right.

Q. As part of your duties in connection with either
448 the Interdepartmental Committee or the Citizens Advisory Committee, did you make any investigation as to whether there had been any Workmen's Compensation claims attributed to pregnancy? A. I made some inquiries as to whether there was any reason to think that keeping women off until they delivered would increase the employers' risk because this is one of the things that we are concerned with.

Q. What did you – how did you do about collecting this data? A. I didn't really collect data. I called. I have no staff. I have one secretary. So a great deal of my information I have to get by calling people in the Government. I know my way around Government and I find out who to call, I call the chap in the Labor Department who is in charge of the Federal Employees Compensation Program.

THE COURT: Just a moment.

MR. KAMMHOLZ: Objection, Your Honor, as to hearsay. Move the answer be stricken.

THE COURT: Objection sustained.

BY MS. WEYAND:

Q. Do you know of any printed reports or studies which state whether or not there is a record of claims having been filed for Workmen's Compensation? A. I
449 couldn't find any, couldn't find any data at all, published data.

Oh, the Prentice-Hall survey did have a reference to it, yes. I guess they asked employers if –

Q. I show you Plaintiffs' Exhibit 78 and ask you if that is the Prentice-Hall study to which you had reference? A. Yes.

Q. Made the statement? A. This is it.

Q. And you know of no other information? A. No.

Q. You made an effort to find other information? A. That's right. This came up after we had done our study, after the Council had done its study. At the time I could find nothing at all, but this did come out later.

Q. To what extent are mothers of small children employed in industry today?

THE COURT: You mean young children, don't you?

MS. WEYAND: Yes, young children. Correction. Thank you for the correction.

THE WITNESS: It depends on the salary of the husband. The data I have here is by salary of the husband.

BY MS. WEYAND:

Q. Would you state what data you have reference to
450 now? A. Yes, This is from the U.S. Department of Labor, Bureau of Labor Statistics, summary, special Labor Force Report, October, 1972, Marital and Family Characteristics of Workers as of March, 1972.

I think maybe I have –

Q. I would like to have the witness look at Plaintiffs' Exhibit 72 and ask if that is the data to which she has reference? A. Oh, no, maybe I better use this.

I have a little later data that I have got here, but maybe since this is – was in the record we better use this.

I forgot that this has to be made available earlier. I try to get the latest thing I can before I come to testify.

MS. WEYAND: I would like to offer the up-to-date data, if I might. I am very sorry.

I make efforts when I prepare to get the data and the witness brings in some later data and it seems to me in the interest of having the record complete it should have the latest data.

THE WITNESS: It doesn't matter.

THE COURT: Just a moment, please.

451 MR. KAMMHOLZ: Your Honor, Mr. Strauss advises me that we do not have the former data, so-called Plaintiffs' Exhibit 72, and obviously we don't have the new document which I would like to see, if I may.

MS. WEYAND: He gave me a list.

THE COURT: Miss Weyand, I can't understand why counsel hasn't seen these exhibits. Now, maybe you haven't seen some of theirs, but I can't understand why they haven't seen it.

Can you explain it to me?

MS. WEYAND: I made, pardon me, I gave him a list of my exhibits very well ahead and I sent him over all of the documents. He gave me a list of the ones he didn't have and I sent those to him Friday or Saturday. And this was not on the list he gave me.

I am very sorry if he didn't have it. I made an effort. We have plenty of copies and he certainly would have had it if I had had any idea he didn't have it. I regret very much that he seems not to have had it.

THE COURT: All right.

Anything else, gentlemen?

MR. KAMMHOLZ: May Mr. Strauss respond to this? He is the one, who I noted earlier, that dealt with Miss Weyand in connection with all of the exhibits.

452 MR. STRAUSS: Your Honor, Miss Weyand is correct that I did give her a list of the documents that I was missing. This was last Saturday morning or Saturday afternoon.

Miss Weyand did send me some documents. I am sorry, sir, she did not send me all the documents that I requested.

Now, it may be that I made an error and not requested some, but we are missing quite a number of the documents which appear on her list.

You might inquire why I didn't point this out when I filed our proposed objections.

THE COURT: That was going to be the next inquiry.

MR. STRAUSS: The reason was that on the surface, sir, I thought they were so objectionable as hearsay and irrelevant that I didn't point this out.

THE COURT: Do you have a list now of the proposed exhibits that you have not had an opportunity to see?

MR. STRAUSS: I can compile it in two or three minutes, sir.

THE COURT: All right.

Suppose you do that. Suppose you do that as soon as
453 we recess tonight.

All counsel will, please, remain and use the conference room so that you may exchange exhibits, something which should have been done some time ago.

And I will have to keep the witness for cross-examination, gentlemen, until you have had an opportunity to see this. If it is tomorrow it is tomorrow.

Go ahead and let's see if we can't move along.

Use the latest information you have.

MS. WEYAND: Thank you.

Will you give your latest information, please, Mrs. East?

THE COURT: And the sources, please, ma'am.

THE WITNESS: All right.

The source is the Special Labor Force Report No. 153 of the Bureau of Labor Statistics, March 1972.

And the participation rate of mothers with children is shown by income of the husband (Table J).

When the income of the husband is under 3,000 a year, 31 – 34.1 per cent of the mothers with children under six are in the labor force.

Of the mothers with children six to 17, 51 per cent
454 are in the labor force.

If the income of the husband is $3,000 to $4,999 39 percent of the mothers with children under six are in the labor force. 53 percent of those with children six to 17.

If the husband's income is 5,000 to 6,999 37.7 per cent of the mothers with children under six are in the labor force and 57.3 per cent of those with children six to 17.

With income of the husband between 7,000 and 9,999 32.8 per cent of the women with children under six are in the labor force. If you are not looking at it maybe I ought to point out that the highest participation rate for mothers with children under six is in the 3,000 to 4,999. 39 percent there. Then it starts going down. When you get to the 7,000 to 9,999, the one I was just quoting, 32.8 per cent are in the labor force. 56.3 of those with children six to 17.

The 10,000 and over, 22.4 per cent of the mothers with children under six are in the labor force. That is the lowest percentage of any group. 45.1 of those with children six to 17.

And I think the general trend here is that the higher the income of the husband the less apt a woman is to
455 work with children under six. She is a little more likely to work if the children are six to 17.

But here again it goes down with the income of the husband. The percentage of women working goes down as the income of the husband goes up.

BY MS. WEYAND:

Q. Has there been a change or trend in recent years with respect to the employment of women with young children; A. Yes, It has been going up.

Q. Do you have figures on that? A. Yes.

In March, 1960, 18.6 per cent of women with children under six years of age were in the labor force.

In March, 1972, it was 30.1 per cent. With children under three in March, 1960, it was 15.3 percent. In March, 1972, it was 26.9 percent. For all wives in 1965 it was 34.7 per cent without regard to the age of their children and 41.5 in 1972.

So here again, the younger the children the less apt she is to work, but nevertheless the figure is going up. It has gone from 15.3 to 26.9 for the women with children under three.

The participation of younger women who are in the
456 prime childbearing years has also gone up substantially. In 1960 28.2 per cent of all wives under 35 were in the labor force. Today it is 43.4 per cent. Of those 35 or over it was 31.7 percent in 1960 and 40.4 per cent in 1972.

Now, these data came from the Monthly Labor Review for April, 1973, pages 33 and 34, "Labor Force Activity of Married Women."

Q. Do you have any reason for believing that these figures do not represent what women would do if employers would assure women the right to return to their jobs and if pressures from employers were not applied to discouraging returning to work?

MR. KAMMHOLZ: Just a moment.

If the Court please, I object.

The question assumes matters not of record, at least in two instances.

THE COURT: Overruled.

Go ahead and answer it if you can, ma'am.

THE WITNESS: Well, I think one of the reasons it has been going up is because the cultural pressures are

decreasing, and employers' pressures, I suppose, are decreasing too as the cultural pressures do and as laws give
457 women some leverage for enforcing rights. Women in the labor force have smaller families too. That is in this same article. Very interesting.

Q. The one in the Monthly Labor Review that you referred to? A. Yes.

Q. Do you have the figures on that handy there?

A. Yes.

For women not in the labor force the age 15 to 44.

THE COURT: Let me get it straight.

What are you reading from, ma'am?I really haven't got it. This official Government document?

THE WITNESS: Yes, sir. Yes, sir. I will show you. I have taken these data down, but it is from the Bureau of the Census publication, Series P-20, No. 240, "Birth Expectations and Fertility", June 1972.

THE COURT: All right.

I took these figures out because I didn't want to have to go from page to page there.

Women 15 to 44 who were not in the labor force had 1.88 children per woman.

458 For those in the labor force it was 1.25.

For women 40 to 44, which would be woman who have completed childbearing years, pretty largely, it was 3.34 for those not in the labor force and 2.74 for those in the labor force. This had been a consistent pattern over the years for labor force participation.

Women in the labor force have fewer children than those not in. There have been no studies of women that have careers that I can find. This is just the women in the labor force at any given moment.

BY MS. WEYAND:

Q. To what extent had women been permitted to

return to employment as soon after childbirth as their physicians have approved as far as you have studied industry in the past and investigated the matter? A. We could find very few employees – we could find very few employers that had permitted women to come back when they wanted to.

Q. Could you tell us of the various federal laws under which disability benefits are paid and state the extent to which, if at all, payments are made for periods of disability due to childbirth or complications of pregnancy?

459 A. Well, the Railroad Unemployment Insurance Law is a federal law and it provides payment for just like any other disability, and Federal Civil Service Law does.

The Social Security Disability Law provides for payments, that is for long-term disability, for more or less permanent disability. And it provides for payment where the women has a condition that resulted from pregnancy, a long-term disability that could come from, I guess, the kind of thing the doctor was talking about this morning, some of the more major disabilities, major complications.

Q. Have you made a study of what, if any, provisions for income maintenance is made in whole or in part in other countries with respect to absence from childbirth or complications of pregnancy? A. Well, I don't recall the study.

THE COURT: I am sorry.

Would you mind?

THE WITNESS: Sorry

I used in determining for the Council what was done in foreign countries this public Social Security program.

MR. KAMMHOLZ: May I interpose an objection, Your
460 Honor?

We object on the ground that this is irrelevant to the issues in this case.

THE COURT: Go ahead.

BY MS. WEYAND:

Q. You are referring to Plaintiffs' Exhibit 85, are you, is that correct? A. I don't know what the number is. This one. Yes.

Social Security Programs Throughout the World, 1971. It is published by the Department of Health, Education, and Welfare every year or every two years, and it has a breakdown of the various kind of social security programs in all the countries.

And most of the European countries have a social security system that includes compensation for loss of income while people are temporarily disabled, while employees are off from work, and it includes the time a woman has to be off for pregnancy.

Q. Do you know if these financing and administration of these provisins for disability from childbirth and pregnancy are financed and administered as part of the social security system for other disabilities?

461 A. In other countries it is largely a part of the federal, or the national system of social security. And that is, of course, what the Johnson Council recommended, a federal temporary disability insurance system.

Q. Covering all disabilities? A. Covering all disabilities.

Q. In private industry, and that included in that not treated differently would be disabilities from childbirth? A. That is the way they thought that maternity leave should be handled. They came to this conclusion from a study of maternity leave.

Q. Now, did the Citizens Council, the report which you have mentioned, differ from that? A. The Council didn't take a position on that.

What they recommended was within the present framework of our system, the way it is developed here, that whatever requirements, whatever provisions an employer had for other temporary disabilities should be applied to pregnancy.

Q. Took no position that they should change the social security system in this country by having a national system?

462 A. That was one of the options that was put up in the staff paper. When I do a staff paper I try to give them all the options and to go into what other groups have done in the past, and they did not adopt this option.

Q. They felt the social security system that developed here in private industry is one that should be applied equally as employers set up their own system? A. That is what the recommendation indicates.

Q. Yes.

Could you tell me what the experience has been in the states that have, New Jersey I believe for instance, has covered in its disability system, disabilities arising from pregnancy and childbirth? Are you acquainted with what the experience has been? A. Yes.

The New Jersey system provides for payments for four weeks before and four weeks after childbirth. And I have some data for New Jersey that they publish in their annual report which indicates that less than eight weeks is taken by two groups.

They have two systems for paying temporary disability insurance, not two systems but two funds from which it is paid.

Q. This is for non-pregnant cases as well as pregnant?

463 A. Generally the system provides that if a person is on the job or has been laid off less than three or four weeks he is paid out of one fund. His temporary disability

insurance payments come out of one fund. If he has been laid off more than four weeks and he is entitled – he is otherwise eligible, his temporary disability insurance payments come out of what they call unemployment fund.

And they break down the pregnancy claims in both funds. And in the fund where the women have not been off more than a couple of weeks it is a little less.

Q. Than in the unemployment fund? A. Yes. But in both cases it is less than eight weeks. And they state in their annual report that the reason most of their pregnancy claims come out of the unemployment fund, is that employers require women to take off before the four weeks, before the four-week period, so they pay most of their claims out of that fund. That information appears in the Law Review article, and I don't know which exhibit that is.

Q. Let me show you 82 and ask if that is the information?

464 A. The Law Review article that that information appears in, yes, also appears in this.

Q. Is that the one you are referring to, or another? A. No. The Law Review article, Mrs. Koontz's Law Review article.

Q. That is 83-A, then? A. That information was put in there.

Q. I show you Plaintiffs' Exhibit 83-A and ask if it appears in there? A. Yes.

Childbirth and Childrearing Leave: Job-Related Benefits, by Elizabeth Duncan Koontz.

MR. KAMMHOLZ: Move to strike, Your Honor, on the ground that that is hearsay twice removed.

MS. WEYAND: I was going into – I am sorry.

I wanted to lay a foundation.

THE COURT: You best lay your foundation first. It is not your fault, but I have been misled to some extent by just looking at the list of exhibits.

Go ahead and see what you can do with it.

BY MS. WEYAND:

Q. With respect to Plaintiffs' Exhibit 83-A, did you participate in preparing this Law Review article?

465 A. Yes. I did all the research and did the first draft.

Q. And every bit of date in there? A. Every bit of data I collected.

Q. And you drafted it? A. Yes.

Q. Drafted the article? A. Yes, I did.

Q. You did this as part of your position with the – A. Yes.

Q. – Federal Government? A. Yes. This is customary in the Federal Government. I have spent many years of my life drafting publications for other people's names.

Q. And with respect to the New Jersey data, where did you get the New Jersey data you have told us about? A. From the annual reports of the New Jersey State, whatever the name of that state organization is, that administers the temporary disability insurance system.

I called up there and they sent me all their annual reports. And what I didn't understand I called up and got explained to me.

466 Q. And then you listed in here – A. Yes.

Q. – in Plaintiffs' Exhibit 83, the sources you used – A. Oh, yes.

Q. – for the date? A. All footnoted. Shows the sources from which it came.

Q. Okay. A. A great deal of the other information that I have given is also in here.

Q. With the source data – A. Yes.

Q. – which you obtained by collecting the data?
A. Yes. That's right.

Q. Do you have data on the differences in the absentee rate in private industry between males and females?
A. Yes. I think I do. But I don't know where it is here.

The absenteeism in labor turnover publication of the Women's Bureau includes that data.

I think I see it there.

Q. This is Plaintiffs' Exhibit 66 to which you make reference, is that correct?

467 A. Yes. That's right. Facts about women absenteeism and Labor turnover.

Q. Do you have other studies besides this one on absenteeism? A. I don't think I do.

Q. That is the only one in which you are acquainted?
A. Yes.

The Public Health Service does an annual survey showing how much time men and women lose from work because of illness. And in this one it is for the calendar year '67, shows an average of 5.6 days lost by women and 5.3 days lost by men. This is based on a survey of households by the Public Health Service. They do it regularly.

Q. All right.

I believe that is all the questions I have.

THE COURT: All right.

Can you cross-examine at this time, sir? If it puts you at a disadvantage, not having seen these papers, I will let you withhold it.

MR. KAMMHOLZ: Your Honor, may I?

THE COURT: You want a brief recess?

MR. KAMMHOLZ: I was going to suggest that I begin part of my cross-examination. It would certainly shorten

468 it for a later time.

THE COURT: All right. Whatever your pleasure is.

I think maybe I haven't given any thought to the court reporter. We have kept him at it.

Would you help the witness down, please?

(The witness stood aside.)

THE COURT: The Court will stand in a brief recess.

(A recess was taken at 2:30 to reconvene at 2:45.)

(The witness resumed the stand.)

THE COURT: All right, Mr. Marshal, help the witness.

All right, sir.

MR. KAMMHOLZ: Your Honor, during the recess we engaged in colloquy with plaintiffs' counsel.

We now have a copy of Plaintiffs' 121. It is a short exhibit, a little over a page.

We have had an opportunity to examine it, and obviously it would not be particularly appropriate to stand on our objection that we did not have a opportunity to examine it.

The exhibit was not produced in time.

469 I should like therefore, to withdraw that objection, but to object to the exhibit on the ground of hearsay.

THE COURT: May I see it?

I will take that under advisement.

The objection on its face is well taken, as are many of your objections, frankly, now that I have gone into it a little more. I will let you go ahead with your examination, and then I have some questions to ask the witness, after which I will let you come back to it.

MR. KAMMHOLZ: Very well.

Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KAMMHOLZ:

Q. Mrs. East, you testified that you have appeared before several legislative committees in connection with the Equal Rights Amendment? A. Yes, sir.

Q. Were you active in promoting adoption of the Equal Rights Amendment? A. Well, an Executive Secretary is not usually active, the Council was. Our Citizens Advisory Council at its meeting in 1970 endorsed the Equal Rights Amendment. And I had found a staff person from the Federal Government to prepare a legal memo, and it
470 was prepared.

I am personally convinced it is a desirable, very highly desirable thing for women.

Q. Are you familiar, Mrs. East, with the majority report of the Committee on the Judiciary – A. Yes, indeed.

Q. – dated March 14, 1972? A. Yes, sir. I refer to it frequently.

Q. Indeed, you have provided copies at various women's group meetings – A. Oh, yes.

Q. – have you not? A. It is an important part of the legislative history on the Equal Rights Amendment.

Q. Do you embrace the views expressed in that minority – in that majority report? A. In general. I wouldn't say I endorse all of them.

Q. But when you go before legislative bodies and committees do you draw this distinction? A. Well, if I were testifying about anything that I disagreed with I would certainly say so, but in my testimony that I have made before legislative bodies I have been testifying as to things with which I had no reservation whatever.

471 Q. But it is your testimony here that you do have reservation about some of the language of the majority report? A. Slightly.

You are getting to the maternity leave.

Q. No. You have answered my question. A. Okay. Yes, I do on that point.

Q. Any other points? A. I don't know.

I haven't read it that carefully recently.

I know that I always have had a problem with this with that report, although I think in general it is a very fine legal basis for interpreting the Equal Rights Amendment.

Q. Have you in any of your testimony before a state legislative body or before any other agency drawn a distinction as between maternity provisions of the majority report and other provisions? A. No. I have never testified on maternity leave.

Q. Have you testified on ERA? A. Yes, I mean when I was testifying on ERA I never discussed maternity leave.

Q. Now, going back to your testimony concerning the
472 Citizens Advisory Committee, did I understand you correctly to say that in 1969 or '70 recommendations were made for temporary disability insurance coverage to include maternity? A. In 1968, I believe it was.

Q. '68? A. It was the Johnson Council, the members appointed by President Johnson, who made that recommendation.

Q. Were you the Executive Secretary – A. Yes, sir.

Q. Of the group at the time? A. Yes, sir, I was.

Q. Was this proposal one to amend the Federal Social Security System? A. I don't think they wanted to amend the Social Security Act. I think they wanted a separate law that would probably be tied in to the Unemployment Insurance Acr rather than the Social Security Act. That is my recollection. I haven't read that report in some time.

Q. The scheme of the statute was to provide such coverage across the land with exceptions only as to minimal number of employees in certain establishments?

473 A. Yes, with everyone. I think that group, my recollection is, that that particular task force wanted to cover just about all employees.

Q. No matter what size the establishment? A. Well, I am not sure, sir, what size, whether they were getting into that or not. I don't think they got into that in that much detail because the primary – their primary concern, you see, was maternity leave. And they felt this was the best way to handle maternity leave was to have a general federal –

Q. To have the law amended? A. A general federal system of temporary disability insurance that covered everyone.

Q. You made reference to European systems providing payments for disabilities including maternity. Is it not a fact that each of those systems is in the nature of a social security system? A. Yes, it is.

Q. And is it not a fact also that in virtually each of those systems the benefits payable for maternity leave differ from benefits payable for disability sickness or illness? A. No. My recollection was they are substantially the same.

474 Q. Well, are they the same or substantially the same? A. Well, there are different countries involved, and I don't think any two are identical. We would have to look at a specific country before I could say, make a specific answer.

Q. But do you know as you are testifying now whether as a general proposition, and I will rephrase the question, maternity benefits are for the same duration as benefits for sickness and illness? If you don't know you may say so. A. No. I don't recall.

I reviewed this at the time I did the staff work in 1970, reviewed these foreign coutnries, and I found that they were considered under a general temporary, you know, a general system –

Q. Yes. A. – rather than private employers handling it.

Q. Turning now to the agencies of the Federal Government here. I believe you testified that generally speaking these agencies do permit maternity leave? A. Well, they are required by law to permit employees to use sick leave and annual leave for purposes of – when they are disabled because of pregnancy or childbirth.

475 Q. Are you generally familiar with the practices of the various agencies? A. Not with each individual agency. I am familiar with the Civil Service Law.

I worked for the Civil Service Commission for 25 years and I have a general familiarity with the Civil Service Law that governs all agencies. They have some latitude under the law for adopting their own practices. They don't have any latitude about whether they allow – whether they pay or whether they allow sick leave to be used for this purpose.

Q. Is it your belief that the provisions regarding maternity leave are identical with sickness and illness provisions? A. In the Federal Government?

Q. Yes. A. No. The Civil Service Commission has issued some recommended guidelines. They are not mandatory, but they are recommended.

In 1954, I think they issued them recommending that women have to take off, I think, six weeks before and eight weeks after childbirth. I believe those are the periods.

476 Also recommending that they not be permitted to use advance sick leave.

Now, the Council objected to that. We have written to the Civil Service Commission several times requesting that this be changed and requesting those guidelines be withdrawn.

Q. Have those changes been made or those guidelines – A. No, they haven't.

Q. – been withdrawn? A. No, they have a committee set up, and I have testified before the committee, and some of the women's groups' representatives have too, but they have taken no action yet.

Q. Would it be fair to say then that in your view these agencies of the Federal Government discriminate on the basis of maternity leave? A. Not all of them follow the guidelines. The Labor Department doesn't, and I think some others don't. I have not made any survey of which agencies do and which don't. As I say, they are not mandatory.

Q. The great majority of the agencies, however, do make a distinction between maternity leave and sickness and illness leave?

477 A. To the extent of requiring women to take off earlier?

Q. Right. A. I don't know. I say, I have made no survey.

Q. And you have no independent knowledge? A. I know about the Labor Department because I worked there, and I have inquired there.

Q. Do you know about HEW? A. No, sir, I do not.

Q. Defense Department? A. The Defense Department overseas teachers, I checked into that at one point when I testified down here on teachers, and the Defense Department for overseas teachers treats it exactly like any other temporary disability.

Q. Do you know about the practice at the Equal Employment Opportunity Commission? A. No, sir, I do not.

Q. The National Labor Relations Board? A. No, sir.

Q. Mrs. East, you testified on direct examination that a number of companies with respect to which you had made studies engaged in practices which in your view discriminated on the basis of sex, is that right?

478 A. You mean as far as maternity leave is concerned?

Q. Generally? A. Well, I think I am testifying about maternity leave.

Q. I am asking you about sex discrimination generally. A. I have no – I have not investigated agencies generally for sex discrimination.

Q. Agencies or companies? A. Companies. Or agencies.

Q. Did I misunderstand? A. I know what the data shows about relative earnings and this kind of thing and I, you know, have some contact with EEOC lawyers and with the lawyers in the Labor Department who are attempting to enforce the Office of Federal Contract Compliance, but I am quite sure you classify all I have to say on that basis as hearsay.

Q. Yes. I do. A. Yes.

I have some opinions about it.

Q. Well, I am delighted to know that we have some agreement on this point. A. I have spoken before a number of agencies including GE up at Crotonville.

479 Q. This is a company with pretty good employment practices, is it not? A. I have some reservations about them, particularly their maternity leave.

Q. Excluding maternity leave for the moment, it is a pretty good company in terms of nondiscrimination, isn't it? A. I don't know, sir. I don't have any data on how many women you have in top jobs. I don't see any women back here at the witness table, and I didn't see very many when I was up at Crotonville at the executive meeting.

Q. There aren't many around.

They are hard to come by. A. Well –

THE COURT: You see a picket line form around the courthouse and you wouldn't think they are so hard to come by.

MR. KAMMHOLZ: I may have the advantage, Your Honor, in being able to get out of town quickly.

THE COURT: Not if you stay close to me.

BY MR. KAMMHOLZ:

Q. Now, may I go back briefly to your position with the Citizens Advisory Council. You are Executive Secre-
480 tary? A. Yes, sir.

Q. Would you describe the duties of the Executive Secretary? A. Well, Executive Secretary does the work for the group. The Council members set the policy. They, you know, determine what they want to recommend, what subjects they want to study. I usually work closely with the Chairman in setting up an agenda for a meeting.

I may make some suggestions for topics they may take up of interest, or I think the group may be concerned with, and she may make suggestions, and we get suggestions from the members and when we do an agenda then I have to do as much research as is necessary to arrange a program that will give the members background in that area.

Q. Do you gather information for the members?

A. Yes.

Q. You do this by telephone or by letter? A. Yes. And I send out papers to them. We may collect publications of other groups, what other people have done. Anything that seems relevant to the topic we are going to take up we would send out to them in advance so they could be briefed on the topic.

Q. Do you vote as a member?

481 A. No. No, I am not a member. I am the technician who does the staff work.

I am the only full-time employee. The other members serve without pay. They come in for meetings two, three, four times a year for two days at a time.

Q. All women members? A. In this Council, they were. In the preceding Council, they were not.

Q. They serve without pay; that is not a form of discrimination by WCAW against women? A. Some think it is because all the men's advisory groups get paid and get to come in much more often and they have a lot more staff.

Q. The material that you gather, as I believe you alluded to in your direct examination; comes on the basis of phone calls, letter inquiries – A. Yes.

Q. – to other agencies of the Government? A. And reading material. I subscribe to practically all the publications of the women's movement, and there are a great many now. I read the books and I watch the newspapers.

I have quite a collection of materials. See, I have been
482 doing this for 11 years.

So I have quite a collection of materials on all subjects that are directly related to the women's movement of things I have collected, even though the Council may not be studying it at the moment or might not be any idea they would in the future.

And so I have materials on a great many topics, and bibliographies and this kind of thing that I use in planning a program.

And then you see in the Federal Government there is an expert on almost anything. And by working with the Civil Service Commission as long as I did I get a pretty good idea what each federal agency does. I was dealing with them all the time. I have a pretty good idea of where all the experts are hidden, where to call to get information and who is, you know, who is a good source.

Q. And it is this kind of contact work with the experts that describes the nature of your activity for the Council?

A. Well, I prepare staff papers frequently.

Q. From the material that you get from these places?

A. Yes, and from my personal knowledge. I have been in the Federal Government almost 35 years, 25 or it in

483 the Civil Service Commission where I was doing entirely staff work relating to legislation and to the Federal Personnel System.

MR. KAMMHOLZ: I have no further questions, Your Honor, but I should like at this time to move to strike all of the testimony of the witness on the ground that her answers on cross-examination show that her testimony is hearsay.

THE COURT: Well, I don't think that is exactly what she said.

What do you do with this information that you gather? Do you keep it as part of the records of the Council or –

THE WITNESS: Well, I keep the material, but then when we start studying a subject like maternity leave I prepare a paper based on it. The papers that have been published by the Council on maternity leave I prepare.

THE COURT: Part of the ordinary course of business of the Council?

THE WITNESS: Yes, all their publications. And I could bring in a whole stack of them. I have prepared all their publications except – in the last four years, except two that I can remember were prepared by other people.

THE COURT: All right.

484 The objection is overruled.

I guess you don't get to be an expert except from experience and reading. I can separate that.

Objection is overruled.

MR. KAMMHOLZ: May I have a moment, Your Honor? One more question?

THE COURT: Yes. Yes.

BY MR. KAMMHOLZ:

Q. Mrs. East, you are aware, are you not, that the majority report of the Committee on Equal Rights sets out that the ERA does not require that women must be treated in all respects the same as men? A. That's right.

Q. Do you agree or disagree with that statement?

A. I disagree with it insofar as it relates to maternity.

Q. You have answered my question.

The statement goes on, "Equality does not mean sameness." Do you agree or disagree with that statement of the majority report? A. I agree with that. It is an abstract statement with little meaning by itself.

Q. Now, the majority report from the Committee on the Judiciary goes on, "As a result, the original resolution

485 would not prohibit reasonable classifications based on characteristics that are unique to one's sex." Do you again disageee with the majority report of the Senate Judiciary Committee? A. I would –

Q. You may answer that yes or no, please. A. Well, I can't answer it yes or no.

THE COURT: She is entitled to give an explanation.

See if you can't answer yes or no first and then give such explanation as you want.

THE WITNESS: Well, I can answer and then give you the explanation, but I don't want to answer it without.

BY MR. KAMMHOLZ:

Q. Then you may answer and then go to your explanation. A. I would agree with it, but I would have to add some qualifications on various topics.

I think on maternity leave I would – as it relates to employment. Conceptually and in the abstract I can conceive that there might be laws that would deal with pregnancy that would be in accord with the Equal Rights Amendment. I don't know of any right now. Conceptually I

486 think there is a possibility. But when you are talking about employment and relationship of the time a woman has to be off for childbirth, I think any law that dealt with that especially, you know, would be not only in conflict with the Equal Rights Amendment, but also with the 14th Amendment and Title VII, of course.

Q. Are you a lawyer? A. No sir. I am not. I am familiar with this area of the law, though.

Q. Do you believe there are characteristics unique to a sex? A. Yes, but I don't think they make much difference about legal rights.

Q. Well, I believe Senator Javits in the Senate debate agreed with you that there are differences, and he added, "Vive la difference." A. Well, male chauvinists say that. We know where a man is when that is the way he talks.

Q. Well, if the female of the species adheres to the point of view which I gather you take to the contrary, too long, there won't be any of us around to worry or argue? A. You are misrepresenting my point of view. I have two children and I am very happy with them, and I had sick leave when I had them.

487 Q. You were Mrs. East at the time? A. I am Mrs. East, yes, sir.

Q. But you are Ms. East now? A. It doesn't matter. Whatever is comfortable for you is comfortable for me.

Q. In summary, then, it is your testimony here that you disagree with the majority of the Senate Judiciary? A. I don't disagree. I would have qualified it if I were writing that report. I would have liked to have had maybe a paragraph or two there instead of having that one little short sentence.

Q. You have answered my question. You disagree? A. Well –

THE COURT: You can give such explanation as you deem appropriate.

THE WITNESS: All right.

I don't think that – I don't consider that a serious problem in the Senate Judiciary Committee report because I think any judge who had a case before him that involved this would look at the total legislative history and total

purpose and the total situation in which, you know, it was framed.

And I don't have any doubts that most judges would
488 hold that any laws that purported to treat pregnancy different for purposes of employment and maternity leave was, you know, was not in accord with the Equal Rights Amendment. So I don't feel that is a serious problem with it, with the Judiciary Committee report.

BY MR. KAMMHOLZ:

Q. Now, you were – may I move that this be stricken from the record, the testimony of the witness which would substitute her judgment for that of the Court, the last two sentences of the last answer?

THE COURT: Do you really think it could happen?

THE WITNESS: Are you speaking to me?

THE COURT: No.

MR. KAMMHOLZ: Subject to the earlier colloquy about –

THE COURT: Well, I don't mean to be facetious, but I don't think your suggestion ought to be dignified by a ruling from the Court.

MR. KAMMHOLZ: I understand the Court's ruling. I accede to it.

THE COURT: All right.

MR. KAMMHOLZ: Now, in all candor, I don't at the moment – I am not sure that we will have additional in-
489 terrogation.

THE COURT: Well, we will have Mrs. East available to you with reasonable notice. I would not like to confine her –

MR. KAMMHOLZ: Very well. Thank you.

THE COURT: – to the city.

Is there any further examination?

MS. WEYAND: No further examination.

THE COURT: All right.

Will you be available, Mrs. East? Had you planned –

THE WITNESS: Sir, I could – I live in Arlington. It takes me about two hours to get here. So I am not planning to be out of town.

THE COURT: Would you leave with counsel for the Plaintiff a number we can contact you at?

Subject to that you may be excused.

(The witness stood aside.)

THE COURT: Call your next witness, please.

MS. WEYAND: Mrs. Thomas, please.

ERMA THOMAS was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

490

Q. What is your name? A. Mrs. Erma Faye Thomas.

Q. Where do you live? A. Tyler, Texas.

THE COURT: I am sorry. I will have to ask you to keep your voice up, please, so I can hear.

BY MS. WEYAND:

Q. By whom are you employed? A. General Electric.

MR. BATTLE: Excuse me. I don't mean to interrupt, but did you get an answer to the preceding question? If so, I would like for it to be read.

THE COURT: As to where she lived?

MR. BATTLE: Yes, sir. I didn't hear the answer.

THE COURT: Tell counsel where you live.

THE WITNESS: Tyler, Texas.

THE COURT: I am sorry. I thought I understood the first time, I am positive I didn't the second time. Say it again.

THE WITNESS: Tyler, Texas.

THE COURT: Tyler, Texas.

BY MS. WEYAND:

491

Q. By whom are you employed? A. General Electric.

Q. When did you start to work for the General Electric Company? A. May 10, 1971.

Q. What plant did you start to work in? A. The Tyler plant.

Q. What classification of a job did you hold?

A. Tube fabrication.

Q. Are you still on the tube fabrication job? A. I am.

Q. You have worked continually with that job throughout your employment, is that correct? A. Yes, ma'am.

Q. Did you get pregnant during your employment with General Electric? A. Yes, I did.

Q. When did you get pregnant? A. It was the latter part of July or the earlier part of August.

Q. Of what year? A. Of '71.

Q. Did you notify General Electric that you were pregnant?

492

A. I notified them after I had been to the doctor and the doctor told me I was six weeks, and then I took this notice to the nurse of the plant.

Q. Do you know the name of the nurse to whom you took it? A. I know her first name is Sherry. I don't remember her last name.

Q. How long did you continue to work without anybody asking you to stop work? A. Well, I worked up until the day before the baby was born.

Q. All right.

I would like to have the marshal show you Plaintiffs' Exhibit 48.

I ask you if you received a copy of that notice?
A. Yes, I did.

Q. How was that notice delivered to you? A. My supervisor gave it to me.

Q. Who was your supervisor? A. Harry Poulan.

Q. And did he say anything to you when he gave it to you? A. He read through it and he told me that this date would be the last day that I would be – would
493 have to report to work.

Q. And what date was that he told you would be the last day you would have to work?

THE COURT: Is it on there, Mrs. Thomas? You may look at that.

THE WITNESS: No, it is not on here. I don't remember the date.

BY MS. WEYAND:

Q. Will you read that? It is a very poor copy, I must say.

THE COURT: You may approach the witness and point out the date you are referring to, if it is on there.

THE WITNESS: You want me to read it?

MS. WEYAND: Yes.

THE WITNESS: Just that?

"Dr. Orten advised that she may continue her regular duties until the 2/18/72."

BY MS. WEYAND:

Q. Had your doctor advised you that you had to stop work February 18, 1972? A. No, ma'am.

Q. What had your doctor told you, if anything?
A. He told me that I could work as long as I could if it
494 don't bother me, if I had no trouble or nothing.

Q. When you got this notice what did you do?
A. Well, I looked at my supervisor and I told him I hadn't seen that before and I was wondering if it was, you know, really true or not.

Q. What did he say? A. He told me that that would be my last day. And he fooled around and walked off.

Q. Did you do anything else about it? A. Well, no.

Q. Did you actually stop work on 2/18? A. Well, before that date we got this other letter from the company saying that I could work on up until my doctor said I could.

Q. Do you know how you got that letter? A. Well –

Q. Did you go to the union? A. It wasn't in a letter.

Q. Did you go to the union about the fact that you didn't want to stop work? A. Yes. I went to the union.

Q. Yes.

And then you got a letter that you didn't have to stop work, is that right?

495 A. I didn't get a letter. My supervisor told me.

Q. Your supervisor told you? A. Yes, ma'am.

Q. Now, I would like you to look at Plaintiffs' Exhibit 50.

Could you tell me who Mr. Pettey is? A. He is the President of our union.

Q. President of your union? A. Yes, ma'am.

Q. And you are the Erma F. Thomas he is talking about in there, are you? A. Yes, ma'am.

Q. And he wrote that, you went to see him before that or talked to the union about the fact that you didn't want to stop work, is that right? A. Yes, ma'am.

Q. And then after that letter was written the foreman came and told you you could work? A. Yes, ma'am.

Q. How long did you work? A. Well, I worked up until the day before the baby was born. I worked a full shift that day and had the baby the next.

496 Q. What shift do you work? A. From 7:00 to 3:30.

Q. And what day of the week was that last day you worked before your baby was born? A. It was Friday.

Q. It was a Friday.

What time did you go to the hospital? A. I don't know exactly. It was around 10:00, I guess.

Q. About 10 o'clock that night you went to the hospital? A. Yes.

Q. Yes.

Now, how long did you stay in the hospital? A. Three days.

Q. And when did you try to go back to work first after the baby was born? A. It was four weeks after.

Q. And did you talk to your doctor about whether it was all right to go back? A. Yes, ma'am. I talked to him.

Q. What did he say? A. He told me that I could go back if I wanted to, if I felt like it.

497 Q. Did he give you a certificate you should show the company? A. Yes, ma'am.

Q. And the certificate said that you were cleared by him to go back to work? A. Yes, ma'am.

Q. And what was your doctor's name? A. Dr. Orten.

Q. And did you take that certificate to the company? A. Yes, ma'am.

Q. Did they let you go back to work? A. No.

The nurse told me that she would have to check with somebody, and she called and she then came back and told me I would have to wait until I had my six-weeks check-up before I could come back to work.

Q. Did you wait until you had your six-weeks checkup? A. Yes, ma'am.

Q. Then you went back to work? A. Yes, ma'am.

Q. All right.

That is all the questions I have.

498 THE COURT: All right.

Is there any cross-examination, gentlemen?

MR. KAMMHOLZ: May we have a moment, Your Honor?

MS. WEYAND: Maybe I should show her the claim she filed. I am sorry.

Would the marshal show the exhibit, the witness Exhibit WW to the stipulation, please?

THE COURT: Well, it is not necessary. Is it just to identify it?

MS. WEYAND: Yes. I have a copy here if she would like to look at it.

THE COURT: All right.

BY MS. WEYAND:

Q. Is this the form of claim you filled out? A. Yes, ma'am.

Q. Is that your signature on the first page? A. Yes, ma'am.

Q. And on the next page, did you take this to the doctor, is that his signature? A. Yes, ma'am.

Q. And when you got this from the doctor did you file it with the company? A. Yes, ma'am.

499 Q. And I want you to look at Plaintiffs' Exhibit – well, you got a letter from the company denying your claim, did you? A. Yes.

Q. And you have never been paid? A. No, ma'am.

Q. But the company did pay your doctor and hospital bill when you had the baby? A. Yes, ma'am.

MS. WEYAND: That is all the questions I have.

THE COURT: Gentlemen, any cross-examination?

Let counsel see that, please.

MR. KAMMHOLZ: May I see this?

THE COURT: PX-WW to the stipulation, gentlemen.

Any cross-examination?

MR. KAMMHOLZ: We have no questions, Your Honor.

THE COURT: Unless I hear an objection Mrs. Thomas will be excused.

Thank you.

Call your next witness, please.

MS. WEYAND: Mrs. Furch, please.

EMMA FURCH was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn,
500 was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

Q. Please state your name. A. Emma May Furch.

Q. Where do you live? A. Tyler, Texas.

Q. By whom are you employed? A. The General Electric Company.

Q. When did you start work for the General Electric Company? A. October 13, 1966.

Q. What is your present job with the General Electric Company? A. Set up.

Q. Set up? A. Yes.

Q. What was your job when you were first employed? A. Tube cutting-bending.

Q. You have held various different jobs, have you, during the time? A. Yes.

Q. How many children do you have?

501 A. One.

Q. How old is this child? A. She is 15.

Q. While you were employed by General Electric did you become pregnant in 1970 or '71-'72? A. Yes.

Q. When did you become pregnant? A. '72, I believe it was.

Q. In '72.

Do you know what your expected delivery date was? A. July 6th.

Q. How long did you continue to work during your pregnancy? A. I worked up until about the fifth – about the fifth month.

THE COURT: I am sorry. Did you say February?

THE WITNESS: The fifth month.

THE COURT: To the fifth?

THE WITNESS: Yes, sir.

BY MS. WEYAND:

Q. What happened in the fifth month that you ceased work?

502 A. I started threatening a miscarriage and I had to stop.

Q. Did your doctor hospitalize you? A. At first he didn't. I left work. I worked that Wednesday.

Q. What date? Do you remember the date that you worked? A. It was possibly the 12th because I was hospitalized on the 14th.

Q. Of August? A. Which was a Friday, April.

Q. Of April? A. Yes.

Q. 12th of April? A. Yes.

Q. You were hospitalized? A. 14th of April I was hospitalized.

Q. You worked the 12th and went to the hospital the 14th? A. Yes.

Q. How long did you stay in the hospital? A. Through the 17th. I was first hospitalized on the seventh.

Q. The seventh?

503 A. Yes.

Q. And what day did you work up to before April 7? A. The fifth.

Q. You worked until April 5 and went in the hospital on April 7? A. Yes.

Q. Did you deliver while you were in the hospital? A. No. I stayed there until the 11th and the doctor thought maybe I could keep the baby, so he sent me home on complete bedrest.

Q. On the 11th? A. Yes.

Q. And you had complete bedrest? A. Yes.

Q. Did you go back to the hospital again? A. Yes. On the 14th, which was the next Friday, I started having labor pains. And then I went back to the hospital and the next day I delivered.

Q. And what did – did the baby survive? A. No.

Q. Was it stillborn? A. Yes.

504 Q. How long did you stay in the hospital? A. Until the 17th.

Q. And then you went home, did you? A. Yes.

Q. Did you go back to work? A. No.

Q. Did you got to the hospital again? A. Yes. That Wednesday I started having chest pains and I tried to contact my obstetrician and he was busy at the time. I contacted my general, you know, family physician.

He gave me an appointment for that Friday evening to come in for a check. And so I went. He checked me and found that I had pulmonary embolism, which was a blood clot in my lungs, and he hospitalized me again immediately, the same day.

Q. How long were you in the hospital that time?

A. Until the 29th.

Q. When did you return to work? A. The 6th of July, I believe it was.

Q. All right.

I would like to have the marshal show the witness Exhibit XX to the stipulation and ask her if the signature on that is her signature?

505 A. Yes, it is.

Q. And you filled out this claim form, did you?

A. Yes.

Q. And you took it to your doctor, did you? A. Yes.

Q. And will you look at the second page. Is that his signature? A. Yes, it is.

Q. And do the dates that he states there that you were disabled represent the period from the time you had your pulmonary embolism until you went back? A. Yes.

Q. And they don't cover the period that you were off for miscarriage, does it? A. No, it doesn't.

Q. And he told you it was not due to pregnancy as he states there, is that correct? A. Yes. That's right. Correct.

Q. Now, I want you to look at Exhibit YY and ask you if you received that notice from the company?

A. Yes, I did.

Q. And you have not been paid the claim? A. No.

Q. And you did file a grievance about it?

506 A. Yes.

Q. Yes.

The company did pay your hospital and doctor bills in connection with all the matters that you have mentioned?

A. They did.

Q. That is all the questions I have.

THE COURT: Any cross-examination, gentlemen?

MR. KAMMHOLZ: Your Honor, with reference to Plaintiffs' XX, the authenticity has been stipulated, I am advised by Mr. Strauss.

THE COURT: Well, the witness just testified that that was the claim tht she filed.

MR. KAMMHOLZ: I make reference particularly to the second page and the certification by the doctor.

THE COURT: Oh.

MS. WEYAND: This is part of our stipulation.

MR. KAMMHOLZ: As to authenticity, Your Honor. We object on the ground that it is hearsay as to the alleged reason for absence in that the physician's certification has not been authenticated. He is not a witness here and it is hearsay.

THE COURT: All right.

507 Overruled.

MR. KAMMHOLZ: We have no questions.

THE COURT: All right.

Unless I hear an objection the witness will be excused. Thank you.

(The witness stood aside.)

THE COURT: Call your next witness.

MS. WEYAND: Mrs. Williams, please.

MARY WILLIAMS was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

Q. Will you state your name, please? A. Mary Williams.

Q. Where do you live? A. Roanoke, Virginia.

THE COURT: Could you keep your voice up a little, please?

BY MS. WEYAND:

Q. By whom are you employed? A. General Electric.

Q. When did you start work for the General Electric

508 Company? A. October 26, '71 – pardon me, '70.

Q. What? A. October 26, '70.

Q. 1970.

When you went to work were you given an employee handbook? A. Yes.

Q. I would like to have the marshal show, I believe he has the original, 17-B. I don't know if she will recognize the Xerox copy of the same. A. Yes.

Q. This is the handbook. He will show you the actual handbook. A. Yes. That's right.

Q. You were given an employee handbook of that sort? A. Yes.

Q. And do you remember the circumstances in which you were given the employee handbook? A. Orientation, you were given forms.

Q. A company representative at an orientation session gave you the handbook? A. Yes.

509 Q. Did they make any explanation to you about what this handbook was to be used for? A. Yes.

Q. What did they tell you? A. It has the general rules and, well, things you would want to know about working. Just something you would relate to your job.

Q. Do you know what this handbook provided in regard to pregnancy? A. No. I didn't take interest in it because I wasn't planning to become pregnant.

Q. Did you later become pregnant? A. Yes, I did.

Q. When did you become pregnant? A. In the latter part of June, '71.

Q. How long did you work during your pregnancy the first time you went off? A. Until August – well, I was hospitalized August 4.

Q. August 4.

Did your doctor tell you why you were hospitalized? A. I was having complications.

Q. And how long did you stay in the hospital?

510 A. Five days.

Q. Did you go back to work after you got out of the hospital? A. Not immediately. I was out 11 days.

Q. Then you went back to work? A. Yes.

Q. How long did you continue to work? A. Until September 13.

Q. And on September 13 how did you happen to cease work? A. I was having more complications and I went to my gynecologist and we talked and he advised me to discontinue my work.

Q. And he advised you to cease work. And you did cease work, is that correct? A. Yes.

Q. Did he give you any other advice as to how you were to take care of yourself at the time he took you off of work? A. Well, I was to take things easy, you know, not exert myself.

Q. Did you do your housework during that period?
A. No, I didn't.

Q. Did you go out of the house, in the car or to the
511 store or anything? A. No. I didn't make any trips to the grocery store.

Q. You stayed at home? A. Yes.

Q. How much time did you spend in bed? A. I was either on the bed or on the couch most of the time.

Q. Did you have a baby? A. Yes.

Q. When was the baby born? A. February 22, 1972.

Q. And what you have described about not doing housework and not going out in the car was true in the time you went off in September until the baby was born, is that correct? A. Yes.

Q. About being on the bed or couch most of the time?
A. Yes.

Q. When did you go back to work? A. March 26th, I believe, or 27.

Q. When did your doctor clear you to go back to work?
512 A. It was in the fourth week after I had my baby.

Q. And you went to the doctor at that time?
A. Well, I called General Electric. They advised me if I wanted to come back to work to call my physician and get his approval. I did so and he approved and I called the personnel back and they called my foreman to see if they could use me, if it wasn't a lack of work. So I went back to work.

Q. Now, what kind of a job do you have? A. I sit and work with my hands. I assemble plastics.

Q. How large are the pieces of plastic you assemble?
A. They vary, but none of them are over –

Q. Very small? A. Very small.

Q. Light? A. Yes.

Q. This has been your job the whole time you worked at General Electric, has it? A. Yes.

Q. It was your job when you got pregnant? A. Yes.

513 Q. I would like to have you look at Plaintiffs' Exhibit TT, stipulated, and tell me whether or not that is your signature on the first page? A. Yes, it is.

Q. And would you look at the second page and tell me if that was the form which you took to your doctor, he filled out and signed? A. Yes, it is.

Q. And did you show it to the company, took it to the company then, did you? A. Yes.

Q. And did they pay the claim? A. This?

Q. Yes. A. No.

Q. They did not pay the claim.

Company did pay your hospital and doctor bill, is that correct? A. Yes.

Q. But they have never to date paid you any disability for the period you were absent? A. No.

MS. WEYAND: I believe that is all the questions I have.

514 THE COURT: Any cross-examination?

MR. KAMMHOLZ: We have several questions, Your Honor.

CROSS-EXAMINATION

BY MR. KAMMHOLZ:

Q. Mrs. Williams, while you have before you the document that is marked Exhibit TT, and calling your attention to the second page, does your doctor's signature appear, Julien H. Meyer? A. Yes.

Q. He was your doctor? A. Yes.

Q. And above his signature, a few lines above, I call your attention to the printed statement, "The patient has been continually disabled from 9/14/71 through 6/72."

Do you have an explanation as to why the 6/72 appears there?

THE COURT: I am sorry, I didn't hear you, Mrs. Williams.

THE WITNESS: I haven't answered yet.

THE COURT: Oh.

THE WITNESS: That is June. The reason that appears like that was because my due date was March 1st and he
515 was assuming that I would be out two months or eight weeks and that would bring that up to –

BY MR. KAMMHOLZ:

Q. When did you return to work? A. March. 27.

Q. When was the baby born? A. February 22nd.

Q. You indicated something about complications. What, if I may ask, were the complications in connection with the pregnancy? A. I was having cramps and bleeding.

Q. I am sorry. What was the last? A. Bleeding.

MS. WEYAND: Your Honor, this witness has expressed to me a reluctance to go into details in a public presentation. She will be very happy, if they wish, to go into details in private.

THE COURT: It may not be necessary.

MR. KAMMHOLZ: I have no further questions.

THE COURT: I didn't think so.

Any redirect?

MS. WEYAND: No.

THE COURT: Unless I hear an objection Mrs. Williams will be excused.

516 Thank you, ma'am.

Call your next witness, please.

(The witness stood aside.)

MS. WEYAND: Mrs. Hall, please.

BARBARA HALL was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

Q. What is your name? A. Barbara Hall.

Q. Where do you live? A. Roanoke, Virginia.

Q. By whom are you employed? A. General Electric.

Q. When did you first become employed by General Electric? A. April 4, 1966.

Q. Did you receive an employee handbook at the time you went to work? A. Yes.

Q. Did you receive another employee handbook during the time you worked there? A. Yes, ma'am.

517 Q. I would like to have you look at Plaintiffs' Exhibit 17-B and ask you if you received that handbook?

A. Yes, ma'am.

Q. Do you remember how you got that handbook?

A. They mailed it.

Q. It was mailed to you by General Electric?

A. Yes, ma'am.

Q. Yes.

Do you remember about when that was mailed to you?

A. Not really. I would say maybe around '70, but I am not sure.

Q. Some time around '70 you got that in the mail.

Did you get pregnant during the period you worked for GE? A. Yes, I did.

Q. When did you get pregnant? A. About the first of March, 1971.

Q. How long did you work during your pregnancy?

A. Up until the beginning of my sixth month.

Q. Did you discuss with your doctor how long you could work? A. Yes.

518 Q. What did your doctor tell you? A. He said as far as he was concerned as long as I felt good; left it up to me.

Q. And was there any time you didn't feel good? A. No.

Q. How did you happen to cease work at the end of your sixth month? A. I took a note to the dispensary saying when my baby was due and the nurse said this will be your last working day.

Q. Who was the nurse? A. Fern Slaughter.

Q. When did you take the note, what your due date was? A. I probably took it about when I was probably a couple of months, right after I found out I was pregnant.

Q. At that time the nurse advised you how long you could continue work, is that correct? A. Right.

Q. Do you remember the conversation you had with her? A. Well, just told her how happy I was and she said this will be your last due date – working day, rather.

Q. Did you try to file a claim covering the period you

519 were off for sickness for pregnancy? A. Yes, I think I did.

Q. Do you know whether the first claim you filed was accepted by the company, whether they took the form and let you turn in the form that you prepared? A. They sent it back saying it did not cover maternity benefits.

Q. I want you to look at Plaintiffs' Exhibit PP with the stipulation, please.

Would you tell me if that is your signature on the front page? A. Yes, it is.

Q. Would you look at the second page and tell me if that is the signature of your doctor? A. Yes, it is.

Q. Did you try to turn in a form to the company before you turned in this form? A. I am not sure.

Q. Another claim form, this is the first claim form you sent the company, was it? A. Yes, I turned in two.

Q. You turned in an earlier one. You tried to turn in another one? A. Yes. That is the one they gave back.

520 Q. That one they took? A. Right.

Q. Then you later turned in this claim form, is that correct, and got a letter from the company saying they wouldn't pay this, is that correct? A. Right.

MR. KAMMHOLZ: Your Honor –

THE COURT: It is a little leading, but it is just to save time.

MR. KAMMHOLZ: Counsel is leading.

BY MS. WEYAND:

Q. When was your baby born? A. November 21, 1971.

Q. From the time, the end of the sixth month until the baby was born were you in any way unable to work? A. No.

Q. And your doctor did not tell you you couldn't work? A. Right. He said just so I felt okay.

THE COURT: I am sorry. I can't understand you.

THE WITNESS: He said just as long as I felt okay.

521 BY MS. WEYAND:

Q. And you felt okay until your baby was born, is that correct? A. Right.

Q. Did you have any complication of any kind during your pregnancy? A. No, ma'am.

Q. Did you have any complication of any kind in connection with your childbirth? A. No.

Q. How long were you in the hospital? A. Five days.

Q. Did you try to go back to work after you got out of the hospital? A. They told me to wait until my six weeks was up, after I went to have my checkup, and call in, which I did, and they told me to return back to work in two weeks.

Q. Who told you that? A. Mrs. Neal.

Q. She is? A. She is the secretary in personnel, I think.

Q. To? A. Mr. Peterson.

Q. And he is the Director of Personnel, is that correct?

522 A. Yes, ma'am.

MS. WEYAND: That is all the questions I have.

THE COURT: Any cross?

MR. KAMMHOLZ: No questions, Your Honor.

THE COURT: Unless I hear an objection Mrs. Hall will be excused.

Thank you, ma'am.

(The witness stood aside.)

THE COURT: Call your next witness, please.

MS. WEYAND: Mrs. Wiley, please.

DORIS WILEY was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

Q. Will you, please, state your name? A. Doris Wiley.

Q. Where do you live? A. Roanoke, Virginia.

Q. By whom are you employed? A. General Electric.

Q. When did you first start working for General Electric?

523 A. April 15, 1966.

Q. What was your job when you started working? A. When I started I worked in silk screen.

Q. And did you become pregnant during the time that you were working for General Electric? A. Yes.

Q. When did you become pregnant? A. October, 1970.

Q. When you went to work for General Electric did you get a copy of the employee handbook? A. Yes.

Q. Did you get another one during the time you were working for them? A. Yes. Some time later.

Q. When did you get the second one? A. I don't know.

Q. How did it come to you? A. Through the mail.

Q. Will you look at 17-B and see if that is the copy that you got through the mail? A. Yes. This looks like it.

Q. Did your doctor advise you to stop work during your pregnancy?

524 A. No.

Q. Did you discuss with him how long you could work? A. No.

Q. When did you stop work? A. April 30, 1971.

Q. How did you happen to stop work on April 30? A. Well, I got a notice, I went to my doctor and got the slip with my delivery date on it.

Q. Expected delivery date? A. That's right. And I took it to the dispensary to the nurse and I gave it to her.

Q. Do you remember what nurse you gave it to? A. Mrs. Slaughter.

Q. Mrs. Slaughter? A. Yes.

Q. And you gave it to her, and what did she say? A. She looked at the date that the baby was to be delivered, which was July 28, 1971, and then she walked to the calendar, and she was to see when six months would

be, you know, and first it would have been in the middle of the week but she let me work until the end of that week.

Q. Told you – A. To April 30. She said April 30 would be your last day.

525 Q. Your last day? A. Yes, ma'am.

Q. Did your doctor at any time before April 30 advise you to stop work at April 30? A. No.

Q. Did your doctor at any time advise you to take it easier or not engage in your usual activities? A. No.

Q. When was your baby born? A. July 26, 1971.

Q. Did you have any complications? A. No.

Q. Neither before it was born nor at the time it was born? A. No.

Q. How long were you in the hospital? A. Five days.

Q. When did you go back to work? A. September 20, 1971.

Q. Did you make an effort to be back before then? A. No. It was my understanding that you couldn't go back until your baby was eight weeks old, and when I had my six-weeks checkup I called the personnel office and told her when my baby was born and that I had my six-

526 weeks checkup. So she told me that she would call my supervisor and see when I could come back and that she would call me.

And later on that day she called me and told me to return to work September 20, which would have been eight weeks.

Q. You did go back that day? A. Yes.

Q. What kind of a job were you doing before you became pregnant? A. Well, I sit down, engraving.

Q. What? A. Engrave.

Q. Engrave.

Did this involve lifting any heavy objects? A. No.

Q. How long had you been on engraving when you became pregnant? A. I worked there six years.

Q. All the time you were there? A. Yes. That's right.

Q. I would like to have the marshal show you Plaintiffs' Exhibit XX for identification to the stipulation and ask you whether that is your signature on the first page?

527 A. Yes, it is.

Q. Will you look at the second page and tell me if that is your doctor's signature? A. Yes. This is his signature.

Q. When you got that form signed by the doctor did you file it with the company, give it to GE as your claim, did you? A. Well, when I, let's see, I left this form at the doctor's office and they mailed it in.

Q. Yes.

Now, did you hear from the company about it?

A. Yes. I received a letter at first thanking them for my claim and then another one saying that they didn't, you know, they weren't going to pay it.

Q. Couldn't pay the claim? A. That's right.

Q. Did the company pay your hospital and doctor's bill? A. Yes, they did.

MS. WEYAND: That is all the questions I have.

THE COURT: Any cross-examnation, gentlemen?

MR. KAMMHOLZ: No questions, Your Honor.

One moment.

THE COURT: All right.

528 MR. KAMMHOLZ: Your Honor, may I withdraw the "no questions," Your Honor?

THE COURT: That is all right.

CROSS-EXAMINATION

BY MR. KAMMHOLZ:

Q. Mrs. Wiley, have you had another child since the one you described in your testimony? A. No.

MR. KAMMHOLZ: No further questions.

THE COURT: Any redirect?

MS. WEYAND: No.

THE COURT: Unless I hear an objection the witness will be excused.

Thank you, ma'am.

Call your next witness.

(The witness stood aside.)

MS. WEYAND: Mr. Delano, please.

ROBERT GORDON DELANO was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MS. WEYAND:

Q. Will you, please, state your full name?

529 A. Robert Gordon Delano.

Q. Are you an employee of the – where do you live? A. Salem, Virginia.

Q. Are you an employee of the General Electric Company? A. Yes, I am.

Q. When did you start to work for the General Electric Company? A. I started in August of 1956.

Q. Have you been continuously employed since that date? A. Yes, I have.

Q. Are you an officer of the union? A. Yes, I am.

Q. What position do you hold in the union? A. I currently hold the position of Administrative Chief Steward.

Q. What is the Local number at Salem? A. Local 161.

Q. And this is affiliated with the International Union of Electrical – A. Yes, that's right.

Q. How long have you been Administrative Chief Assistant?

530 A. My current office has been since early 1970.

Q. And what do your duties involve as Chief Administrative Steward? A. Well, my duties involve a number of things. I take care of the administrative paperwork, of the processing of grievances. I advise shop stewards on filing of grievances, the wording of grievances.

I am Chairman of the Steward Council which is made up of all the stewards in the shop, which we have about 70 of them currently.

And I take care of arbitration cases, act as counsel for the union in arbitration cases.

I negotiate with the company at the second level of the grievance procedure.

And I work or negotiate with the company on local supplements and other agreements that we may enter into locally.

Q. Did it come to your attention that some of the women were desirous of filing claims for sickness and accident benefits for periods they were disabled by pregnancy?

A. Yes, it did.

Q. When did this first come to your attention, as far as you best can recall? A. The best of my recollection it was in August of 1970, I believe it was 1971, August,

531 1971.

I had a discussion with one of our Chief Stewards, our First Chief Steward by the name of John McDaniels, and he said he heard that the company was not accepting claims. I researched some of our books and I called our office in New York, our insurance specialist in New York City, Jimmy Lawalin and advised him of the problem we were having.

And he in turn talked to our attorney in –

MR. KAMMHOLZ: I object.

THE COURT: Don't tell us any conversation, please.

THE WITNESS: All right.

BY MS. WEYAND:

Q. Did there come a time when the company did accept claims? A. Yes, there did.

Q. Were you notified by someone how you could file the claims with the company? A. Yes. I received a notification from Robert Friedman that the company would now accept these claim forms.

Q. And they did accept them? A. Yes, ma'am, they did.

Q. Do you remember when that was?

532 A. To the best of my recollection, it was a month or so, two months later probably, about two months later.

Q. And you have heard the young ladies from Salem testify, Mrs. Hall, Mrs. Wiley – A. Yes, ma'am.

Q. And those were claim forms that the company accepted? A. Yes. They accepted those claim forms, yes.

Q. Those are the first ones, as far as you know, that were filed in Salem? A. Yes. I believe there was one or – Alberta Smith, I believe, that filed one about that time.

Q. Did any of these employees file grievances when their claims were denied? A. Yes, they did.

Q. Did you process these grievances? A. Yes, I did.

Q. Would you describe what processing you engaged in?

A. Well, what we did in processing the grievances, first of all we advised the stewards through our Chief Stewards of the company that they were not paying claims.

We advised them if they knew any women that had

533 similar problems of pregnancy where the company did not, would not pay or wanted to file a claim, they should do so. If the company refused a claim then she should file a grievance. And I worked up some language and sent it out to our Chief Stewards who in turn were supposed to correspond this to our stewards to let them know how to word the grievance.

Q. And the company denied the grievances?

A. Yes, ma'am, they did.

Q. And you took those grievances to third step?

A. Yes, we did.

Q. Would you describe what is known as the third step in grievance procedure in General Electric? A. Yes. If I could – could I start at one?

Q. If you will, please. A. The first step, the procedure is that the steward, at the foreman level. The second step of the procedure is your union's officers and the company representatives, normally from employee relations at the local location.

The third step of the grievance procedure is the headquarters level of the General Electric Company and headquarters level of the union office in New York.

Q. And these grievances were proposed, Mrs. Hall, Mrs.

534 Wiley and Mrs. Williams were processed through the three steps? A. Mrs. Williams was not processed.

Q. The other two were proposed? A. Yes, they were.

Q. And there were other grievances filed by other employees through the third step? A. Yes.

Q. And you were unsuccessful? A. That's right.

Q. That is all the questions I have.

THE COURT: Any cross-examination?

MR. KAMMHOLZ: One moment, please, Your Honor. Just a few.

THE COURT: I have one.

May I? Then it may be you can follow.

When you say the company not accepting claims, you mean they wouldn't consider them, Mr. Delano?

THE WITNESS: You are taling to me?

Yes, when they tried to turn the claims in they said the girls in the office looked at it and says, "No, we do not accept claims on pregnancy. Here." Gave the claim back.

535 THE COURT: Through your good offices, or somebody's, they finally got to consider them?

THE WITNESS: Yes.

THE COURT: And rejected them?

THE WITNESS: Yes.

THE COURT: All right.

A lot of progress.

All right, sir.

CROSS-EXAMINATION

BY MR. KAMMHOLZ:

Q. Mr. Delano, since when have you been the Administrative Chief Steward? A. Well, my current office has been since 1970. Of course we are reelected every two years, you know, if the membership agrees. I held the office of Administrative Chief Steward once before, but I took a year's rest and went out of office and then came back into the office the next year.

Q. Prior to 1970 were you steward or – A. I had been – well, I had had several offices, actually been a shop steward on the floor in the area where I worked. I had also been a trustee for a short period of time.

I had then what we call just a Chief Steward.

536 This was the job the Administrative Chief Steward before, you know. And also I had been an Assistant Chief Steward before that time.

Q. About what time frame are we talking about?

A. Okay. Well, I can put this in – I would have to guess at the dates. I couldn't give you exactly.

I first became Chief Steward, I believe it was in 1965, I believe.

Before that I was an Assistant Chief Steward, 1964, I believe.

I believe it was in 1963 that I was a trustee.

And before that time I was a shop steward in the plant, just a regular shop steward.

Q. Thank you very much.

Your credentials are impressive.

You are familiar, are you not, with the General Electric insurance plan? A. Yes, I am.

Q. I am holding the booklet in my hand.

Prior to the grievances which you filed in 1971 in connection with claimed weekly disability benefits or absences due to pregnancy or childbirth, the union had not filed any such grievances; is that right? A. Not that I can recall. I don't recall those.

537 Q. Indeed the booklet to which I referred provides specifically that weekly sickness and accident insurance will not be payable for any absence due to pregnancy or resulting childbirth or to complications in connection therewith, you recall that? A. Yes.

Q. So when you did file grievances beginning in late 1971, was this predicated on your view that there was a change in the law? A. Well, it was a combination, combination of my thoughts, I guess. Just prior to that time I had received some legal documents, or what we call "Keeping up with the Law," from our legal department. And these documents I review every once in a while and one night I happened to be reading one of these documents and it come up about the case, the Cohen case,

and I was reading that and I read it and thought about it, you know, and read a number of other cases, arbitration cases and so on and so forth. Then when these questions come up about the company not accepting these claim forms I got to thinking about that and I picked up the insurance book and read what it said in there.

And I put these things together and at that point I called our people in New York.

538 Q. And thereupon you filed a grievance or some –
A. I didn't find the grievances. They were there.

Q. You processed the grievances? A. I processed the grievances, yes, sir.

Q. On the basis of what you understood to be a change in the law? A. Well, I can give you my personal opinion if that is what you want, yes.

Q. Yes.

That is all, Your Honor.

THE COURT: I can't resist it.

You are in error. It was not a change in the law.

THE WITNESS: I don't know that it was a change in the law or not.

THE COURT: I know.

THE WITNESS: It was my interpretation that there was something wrong here.

THE COURT: Thank you.

You may step down.

Call your next witness.

(The witness stood aside.)

* * * * *

544 PROCEEDINGS

(July 25, 1973) (Wednesday at 11 o'clock)

THE CLERK: Civil Action 142-72-R. Martha V. Gilbert, *et al.*, versus General Electric Company.

Continued from yesterday.

THE COURT: Good morning, Miss Weyand and gentlemen.

MS. WEYAND: Mr. DuBow is going to present the next witness.

THE COURT: Miss Weyand, you will have to stand when you address the bench, please, ma'am.

All right, Mr. DuBow.

Come around, please.

MR. DuBOW: Sherrie O'Steen.

SHERRIE ELIZABETH O'STEEN was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MR DuBOW:

Q. Will you, please, state for the record your name?
A. Sherrie O'Steen.

Q. And your address?

545 A. 918 Clark Street, Mayfield, Kentucky.

Q. Do you have any children? A. Yes, sir.

Q. How many? A. Two.

Q. And their ages? A. Three and eight months.

Q. Were you employed by General Electric? A. Yes, sir.

Q. At what plant location? A. Portsmouth.

Q. Portsmouth, Virginia? A. Virginia.

Q. And when did you start to work with General Electric? A. June 1, '71.

Q. Okay.

What job position did you hold with General Electric?
A. Processor on an assembly line.

Q. Now, did you become pregnant during your employment with General Electric? A. Yes, sir.

Q. And what date did you leave General Electric on
546 maternity leave? A. I left October 15.
Q. What year? A. '72.
Q. Now, when did you give birth to your child?
A. November 21, '72.
Q. Were there any complications relating to your birth of your child? A. No, sir.
Q. And how long were you hospitalized? A. Five days.
Q. Did General Electric pay your hospital bills?
A. Yes, sir.
Q. Who was your doctor? A. Dr. Leonard Davis.
Q. Where is he from? A. Portsmouth.
Q. And when did your doctor advise you to return to work? A. When my child was six weeks old.
Q. And when did you return to work? A. When the child was six weeks old, the first of January.
Q. Were you told anything by the General Electric
547 Company when you went off on maternity leave regarding your return to work? A. Miss Short, the Personnel Manager, told me that I was to return to work when the child was six weeks old, and if not, to call and let them know why I could not return when he was six weeks old.
Q. Now, did you have occasion to receive an employee handbook at Portsmouth, Virginia plant? A. Yes, sir.
Q. And how did you get it? A. When I was hired.
Q. Did you read it? A. Yes, sir.
Q. I will ask the marshal to give you Stipulated Exhibit U-3, Plaintiffs' Exhibit 72-B.
THE COURT: 72-B?
MR. DuBOW: 72-B of plaintiffs' exhibits.
Excuse me, 17-B, I am sorry, 17-B, employee handbook of the Salem plant, and call your attention to page six, the second column, where it says "Maternity Absence."

Can you read that into the record, please, the first paragraph only of "Maternity Absence"?
THE WITNESS: "It is the policy of the department
548 that pregnant employees will be required to terminate active work at the end of the sixth month of pregnancy. The employee may terminate active work at any time before the end of the six months if she so elects."
BY MR. DuBOW:
Q. Now, what you have just read is the language in the Portsmouth handbook. How does that compare?
A. It is exactly the same.
Q. Okay.
Now, after you received this employee – after you received an employee handbook – you can hand that back – after you received an employee handbook did you ever have occasion to receive written information from General Electric regarding a change in that policy? A. No, sir.
Q. Did you ever have occasion to see a notice posted on any bulletin board regarding a change in that policy?
A. No, sir.
Q. Did you ever have occasion to hear an announcement by General Electric regarding a change in that policy?
A. No, sir.
549 Q. Now, what month of your pregnancy did you work through? A. I worked to my eighth month.
Q. How were you able to do this in light of this six-month policy? A. Well, my sixth month I asked my foreman if I could continue to work and he said –
Q. Who is that? A. Jim Overton was my foreman, and he said he would go ahead and let me try to work on to my eighth month.
Q. And why did you wish to work through to your eighth month? A. I needed the money at home.

Q. And what was your rate of pay immediately before you went off on maternity leave? A. I was making 2.65 an hour.

Q. How much a week? A. I was clearing $80 a week.

Q. What sources of income did you have when you first went on maternity leave in October of '72? A. I had no source of income.

Q. No source of income. What did you do while on maternity leave regarding financial assistance?

550 A. Well, in the first few months I had no income and then the first of December I filed for welfare.

Q. And when did you receive welfare assistance?

A. I received welfare in December.

Q. '72? A. Yes, sir.

Q. Now, before you received welfare assistance in December can you relate to the Court what happened to you regarding your home, electricity? A. Well –

MR. KAMMHOLZ: If the Court please, I object. This is irrelevant.

THE COURT: Well, I am inclined to agree with you. My only hesitancy in sustaining it is I have just concluded after going over your exhibits to overrule all objections to them, and many of your exhibits go to the economic effect of a change in the company's policy on the company. And while I think that may well be irrelevant when you a are talking about discrimination, if I am going to let that in I think I ought to let this in.

The objection is overruled.

BY MR. DuBOW:

Q. Before you received welfare assistance in December can you relate to the Court what happened to you regard-

551 ing your home electricity? A. Well, I had no way to pay my electricity bill during the months before I received welfare and it was cut off.

Q. And how long was it cut off? A. For about a month and a half.

Q. Now, can you relate to the Court how that electricity cutoff affected you? A. My house was totally electric. I didn't have no refrigeration, no stove to cook on, no lights in the house, and I had a small child.

Q. How did this affect you in food preparation?

A. Well, I wasn't able to keep refrigerated food. I couldn't cook.

MR. KAMMHOLZ: May it be understood that I have a continuing objection?

THE COURT: Yes.

MR. KAMMHOLZ: Thank you.

BY MR. DuBOW:

Q. Okay.

Now, before you received welfare assistance in December of '72 can you relate to the Court what happened regarding the heating of your home? A. I had oil heat and I wasn't able to buy oil for the heat.

552 Q. And how long were you without heat? A. A month and a half.

Q. From when to when? A. From November until I received my check in December.

Q. Okay.

Can you tell us what type of food you and your child were eating immediately before you went on maternity leave? A. I was eating three balanced meals a day, meat and vegetables and milk for my little girl.

Q. And what was it after you went on maternity leave?

A. Sandwich meat and water for my little girl, plus I had to go to a neighbor's for two meals a day.

Q. Two meals a day? A. A week, excuse me.

Q. And how far away was this neighbor? A. She lived almost a mile.

Q. How did you get there? A. Walked.

Q. Now, did you take any medications while you were on maternity leave? A. With everything going
553 like it was I got into a nervious state and my doctor gave me Librium, it was a nerve pill, so I could calm down.

Q. Who prescirbed it? A. Dr. Davis.

Q. And again what was the reason you took these medications? A. Because of my nerves. And at one time I had to have a shot that knocked me cold.

Q. What other medical treatment did you receive? A. I received a shot at one time that I got so bad he was afraid I was going to lose my child, and he gave me a shot to calm me down.

Q. Where did you receive this? A. At Bellevue Hospital.

MR. DUBOW: No further questions. Wait a minute.

BY MR. DUBOW:

Q. How long did you work at General Electric after you returned to work from your pregnancy, from your delivery? A. I worked four months for General Electric.

Q. And was the plant at Portsmouth unionized? A. No, sir.

554 Q. Thank you.

THE COURT: Mr. Kammholz or Mr. Strauss?

MR. KAMMHOLZ: Thank you, Your Honor,

CROSS-EXAMINATION

BY MR. KAMMHOLZ:

Q. How old are your children now? A. Three years and eight months.

Q. You are divorced? A. Yes, sir.

Q. How long have you been divorced? A. I have been divorced two weeks. A. Yes, sir.

Q. Ago? A. Yes, My divorce just went final.

Q. During the period that you have testified about on direct examination when you were without electricity, was your husband living with you? A. No, sir.

Q. Had you planned the baby? A. No, sir.

Q. The attorney on the other side showed you an exhibit marked U-2 that has on its face Salem, Virginia, does it not? A. Yes, sir.

555 Q. When did you first see that exhibit? A. Today.

Q. When you talked with the lawyers about your testimony? A. Yes, sir.

Q. You had never seen it when you worked for GE? A. Not this one. I have one similar.

Q. Where did you get that one? A. It was handed to me in court.

Q. The other one? A. Oh, they gave it to me when they hired me.

Q. Do you still have it? A. Yes, sir.

Q. Where? A. At home.

Q. You didn't bring it with you? A. No, sir.

Q. Did you talk with the lawyers on the other side about it? A. Yes, sir.

Q. Now, there is no problem in connection with your returning to work – strike that question, please. When did you return to work at GE? A. First of January.

Q. When was the baby born? A. November 21.

Q. What year? A. '72.

Q. And you worked to what date prior to the time the baby was born? A. October 15.

Q. I am sorry. A. October 15.

Q. And there was no difficulty in your continuing to work until that date, was there? A. No, sir.

Q. No further questions.

THE COURT: All right. Any redirect?

MR. DUBOW: No further questions.

THE COURT: Unless I hear objection the lady will be excused. Thank you, ma'am. You may step down. Call your next witness. (The witness stood aside.)

* * * * *

558 MR. STRAUSS: The defendant withdraws Exhibits Number 6, 9, 15, 43, 44, 45, and 46.

I would say, if I may at this time, with respect to Defendant's Exhibit Number 14, which is a deposition of a Dr. Wilbanks as to which there has been no objection, we did not file with our exhibits the physical deposition, but the deposition is on file with the clerk.

THE COURT: It is a de bene esse, is it?

MR. STRAUSS: I believe in view of the delay it is no longer a de bene esse deposition, Your Honor. It was taken about three months ago, as I recall.

I am asking that the deposition of Dr. Wilbanks be incorporated physically with our other.

THE COURT: Well, it is a little unusual, though, isn't it, to mark a deposition as an exhibit? You are entitled to read it or have the Court read it and consider it, but not as an exhibit. That is the usual procedure.

MR. STRAUSS: You would –

559 THE COURT: You want to be sure that I see it?

MR. STRAUSS: Exactly. That is all.

THE COURT: I will do that.

Now, that is 14, is that correct?

MR. STRAUSS: Yes, sir.

THE COURT: So you technically withdraw that?

MR. STRAUSS: I will be glad to.

THE COURT: Subject to what the Court has just said. All right.

So you have now 6, 9, 14, 15, 43, 44, 45, and 46, is that correct, sir?

MR. STRAUSS: Yes, sir.

THE COURT: Is there any objection?

MS. WEYAND: No objection.

THE COURT: All right.

As I have already indicated in my dialogue with Mr. Kammholz, I have gone over the objection to the defendants exhibits. I found that many of the defendant's exhibits go to the economic effect of a change of the policy that they allegedly have in effect, and I must say I have serious doubt as to, when you get around to talking about discrimination, whether dollars and cents mean anything.

Somebody will have to show me that it does before I

560 give much effect to it, which is why I permitted the defendants to put on the evidence in reference to Mrs. O'Steen.

I am going to consider all of it. As a consequence I overrule the objections made by the plaintiff to defendant's exhibits. And I have already ruled on the defendants objections to the plaintiffs' exhibits, because I think we should have a full record, but I don't want the Court's ruling to be interpreted by your side as the Court's conclusion that the matters are relevant.

I am just not going to rule on that at this stage. I don't know.

MR. BATTLE: If Your Honor please, just a small point.

I think Your Honor misspoke in the beginning of that ruling.

May I ask the reporter to read back the first sentence or two? I think it was an inadvertent statement that it was defendant's when you meant to say it was the plaintiffs'.

If you will read that back, I think we will pick it up. I may be wrong.

THE COURT: Will you, Gil?

(The reporter read the excerpt referred to.)

561 THE COURT: I meant the plaintiffs. Mr. Battle, that is a first. Anything else?

MS. WEYAND: I wanted to be certain that it was all right to brief that fully, and I will not need to make the objections when it is placed in the record, but we do urge you to disregard it when it comes to the briefing of the case.

THE COURT: Yes, indeed. If we get around to briefing.

* * * * *

CURRICULUM VITAE - ANDRE E. HELLEGERS, M.D.

562 & BORN:

563 June 5, 1926, Venlo, the Netherlands.

MARRIED:

Charlotte Frazer Lindsay Sanders, 4 children.

EDUCATION:

Stonyhurst College, England 1940-1944
Edinburgh University Medical School, 1944-1951
L.R.C.P., L.R.C.S., L.R.F.P.S., 1951
Belgian National Boards, Brussels, M.D., 1952
Diploma of Aviation Medicine, Paris University, 1953.

HOUSE STAFF:

Department of Obstetrics and Gynecology, The Johns Hopkins Hospital, 1953-1956, 1959.

FACULTY APPOINTMENTS:

Intern to Associate Professor, Johns Hopkins University 1953-67.
Josiah Macy Research Fellow in Physicology, Yale University, 1956-57.
Lecturer in Population Dynamics, Johns Hopkins University, 1966-
Professor of Obstetrics-Gynecology, Georgetown University, 1967-
Professor of Physiology-Biophysics, Georgetown University, 1969-
Director of Population Research, Georgetown University, 1971.

OTHER ACTIVITIES:

Member, Josiah Macy Foundation High Altitude Expedition, Peru, 1958.
Senior Research Scholar, The Joseph P. Kennedy, Jr. Memo Foundation, 1961-67.
Member, Research Advisory Committee, United Cerebral Pal Foundation, 1964, 1970.
Consultant, Office of the Secretary of Health, Education and Welfare, 1964-65.
Member and Deputy Secretary General, The Papal Commission on Population & Birth Control, 1964-1966.
Member, President Johnson's Committee on Population and Family Planning, 1968.
Technical consultant, Population Reference Bureau, 1970-
Member, Study Section on Human Embryology and Development, NIH, 1967-1971.
Member, National Advisory Child Health and Human Development Council, NIH, 1971-

SOCIETIES:

A.O.A.
Member, American Gynecological Society, 1971.
Honorary Fellow, South Atlantic Association of Obstetricians and Gynecologists, 1971.
Member, The Society for Gynecologic Investigation (president, 1968).
Member, The Perinatal Research Society (President, 1971).

EDITORIAL BOARDS:

Georgetown Medical Bulletin, 1963-
American Journal of Obstetrics & Gynecology, 1963-70;
European Journal of Obstetrics & Gynecology, 1971-
Gynecologic Investigations, 1971-

* * * * *

564 ANDRE E. HELLEGERS

was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified on his oath as follows:

THE COURT: Doctor, I understand you just arrived. Would you like a few minutes before you testify?

THE WITNESS: No, sir. That is fine, sir.

DIRECT EXAMINATION

BY MS. WEYAND:

Q. Will you, please, state your full name for the record? A. Andre E. Hellegers, H-e-l-l-e-g-e-r-s.

565 Q. Where do you live? A. 10104 Newhall Road, Potomac, Maryland, 20854.

Q. I would like to have the marshal hand Dr. Hellegers his curriculum vitae which is on file with the Court.

I have a copy if you would prefer to use the copy.

THE COURT: Yes, please.

BY MS. WEYAND:

Q. I ask you if you prepared this curriculum vitae?

A. Yes, I have. I recognize it.

Q. Is there anything that needs to be added to bring it up to date? A. I am no longer on the Editorial Board of the – oh, that's right, it says 1970.

Yes, since October, 1971, I am the Director of the Joseph and Rose Kennedy for the Study of Human Reproduction at Georgetown.

Q. Would you state what your duties as Director and what the Institute is concerned with? A. Well, the Institute essentially studies the processes and the consequences of human reproduction in the biological and social and economic sense and has an ethics component

566 that deals with matters of ethics in modern biology and medicine. And my functions are to coordinate various activities.

Q. Does your practice represent a specialty within the field of obstetrics and gynecology? A. No. I am an obstetrician-gynecologist and what is sometimes called a fetal physiologist, but in terms of practice I have never done any gynecology, that is to say dealing with non-pregnant women. So it has been in obstetrics with a heavy focus on the welfare of the unborn child.

And in terms of that I do consulting work only. This is, I only see patients at the request of other doctors.

Q. Do the patients whom you see have a higher rate of complications than –

THE COURT: Let me interrupt you at this stage.

Now, you are qualifying the doctor as an expert in the field of obstetrics, is that correct?

MS. WEYAND: I also would like to qualify him as an expert in the field of social and economic consequences attendant to the medical care and socio-economic condition of the woman as doctors can see its effect on the

567 human fetus and on the mother.

THE COURT: Gentlemen, do you wish to cross-examine the doctor on his qualifications? Is there any objection to his qualifications in the field?

MR. BATTLE: We do not wish to examine him on his qualifications.

THE COURT: All right.

The doctor is qualified.

BY MS. WEYAND:

Q. Do the patients whom you see therefore represent women with a higher degree of complications and non-routine cases than the average practitioner sees?

A. I think I would go further and say that I see nothing but complications since I only consult with people that take care of the normal.

Q. Approximately what percentage of the pregnant patients do you see are employed in paid jobs outside

the home when they become pregnant? A. I am sorry. I have never asked them that.

Q. You have no idea? A. I have no idea.

Q. Have you had occasion to advise any of them on whether they should continue to be – A. Oh, yes.

568 Q. – employed? A. Yes.

Q. What kind of advice do you give them? A. A. Well, I think the advice is usually based on common sense, dependent on the job, and the usual advice is that they may continue work until you decide that they may not.

In other words, until something intervenes of which you would say given these circumstances you should work no longer.

Q. Is there to your knowledge any physiological reason which warrants a rule that at any given stage of pregnancy the pregnant woman should cease her paid job? A. Depends totally on what the paid job is. If she were to be a woman pilot I wouldn't advise her to fly in the ninth month. She would have difficulty getting herself between the steering wheel and the seat. So it is a question of common sense depending on what the job is that she has.

Q. What kind of jobs do you think of that would require a rule which fixed a given stage of pregnancy as the termination date? Can you specify the type of jobs? A. No, I couldn't specify. I would say that they would

569 be all such jobs in which girth becomes an impediment. Going up telephone poles, down manholes, driving trucks. It is a question of accommodating girth.

Q. Does the pregnancy itself unaccompanied by any complications in a normal, healthy woman require her to cease engaging in the type of activities which she is accustomed to engaging in prior to pregnancy?

A. In itself, no. Unless, I say, girth becomes an impediment and it is a question of bad fit.

Q. Is a pregnant woman more susceptible or less susceptible to sickness and disease during her pregnancy than she was when she was not pregnant? A. Well, that is a complicated question.

There is nothing in pregnancy that I know of that confers immunity against a disease.

There is in pregnancy, by virtue of the rapid weight gain, a tendency to bring out diseases which pre-existed the pregnancy, which diseases would be similarly brought out with rapid weight gain in a man, a man who rapidly became obese and who had a borderline underlying tendency towards, say, diabetes, would have that diabetes brought out by the rapid weight gain.

Whether you want to ascribe that to pregnancy or not is another matter. So I am fundamentally saying that

570 conditions of rapid weight gain, both in men and women, bring out tendencies to certain underlying diseases, such as underlying hypertension, underlying diabetes, possibly underlying thyroid disease, and so forth.

Q. How do you define disease? A. That is quite a complicated question to answer.

We need a whole set of approaches to the definition, and I don't know which of these to define by myself.

Some people would define disease or abnormalcy as a statistical deviation from an average.

Under that kind of definition, for instance, hypertension might be a disease, hypotension would be a disease; but it is a vague definition because it presumes something like normal tension, and so when you statistically deviate either towards the low or high side from that number then you might say that is abnormal, that is a disease.

A second approach would be to try to define disease

in terms of ability to function. To show some of the handicaps of going that route it might mean that somebody who had, say, a Jewish nose in Nazi Germany and was consequently unable to function in Nazi Germany
571 would have a diseased nose. That leads to certain, you know, ridiculous lengths, but there are people who talk about ability to function. A third kind of definition would have it that disease is that which, if not corrected, would continue leading to further debility and ultimately to death. I suppose that is the commonest definition.

A fourth and more modern type of definition has come through the World Health Organization's definition of health which says that it is not just an absence of disease but the presence of a total sense of physical, psychological, and social wellbeing. So that conversely, you might then define disease as the absence of a sense of total physical, psychological or social wellbeing.

But each of the definitions has advantages and drawbacks.

Q. Is sickness a medical term? A. Well, sickness, I think, is much more a lay term, It is a word used much more by the laity in terms of the way they feel like illness and sickness.

Disease would be much more the medical or technological term for the conditions that a patient might have.

Q. Is accident a medical term? A. No. These
572 are words used in the medical profession as a transference from lay terms, but it is not specifically medical or restricted to medicine.

Q. Does the medical science have a different definition for accident from the layman? A. Not that I am aware of.

May I qualify that? I mean occasionally you may talk about a certain part of the hospital being called the

accident room to which come patients other than those who have accidents in the lay sense.

So a case of acute pneumonia might be rushed by ambulance into the accident room, not the pneumonia room. But I think that is a question again of common sense use.

Q. Have you had experience with pregnant females who did not take leave prior to childbirth but continued on their job until labor began? A. Oh, yes, lots. I would say that that is probably what in my position I see the most because my office is on the third floor of Georgetown University Hospital which houses the obstetric department and the pediatric department. And if you want to see anybody who works right up to labor it is nurses in obstetrics and women – and women obstetricians and women pediatricians. So we have a fair amount of pregnant house staff working right on through to labor.

573 Q. Is there any indication that any of these women are acting contrary to the directions of the best medical advice, the nurses and the doctors that are working?
A. You mean the obstetricians and pediatricians themselves? Presumably they know what they are doing. I am sure also the obstetricians that takes care of a pregnant woman pediatrician or a pregnant woman obstetrician, if he were to tell her she ought to stop working she would probably do it. And I expect that by common sense if he gave her the indication as to why she should do it she would agree to it.

You know, presumably they know themselves what obstetrics is about and what pediatrics is about.

Q. Is there anything about pregnancy which per se disables a normal, healthy woman prior to the onset of labor? A. Prior to the onset of labor?

No, unless it is miscarriage.

So there is a certain period up to 20 weeks when she could be disabled due to miscarriage.

If you pass the miscarriage stage then between that and going into labor there is nothing in pregnancy itself that disables with the exception again of the girth story,
574 if I may, you know, revert to that.

Q. Has it been your experience that patients who continue to be gainfully employed on a full-time job outside the home have a greater incidence of complications during pregnancy than women who stay home? A. No, it has not been mine, unless you want to include psychological problems, in which case I would say that the ones staying at home are probably worse off, have much more tendency to brood, get annoyed and this kind of thing, but that would be psychologically an effect.

Q. Is it today accepted medical practice that a pregnant female can continue to be employed on her usual job until the onset of labor? A. Yes. Within the limitations of the girth story that I have said. You know, if she were, I don't know, a telephone operator, secretary, yes, certainly she could continue to work on to labor. If she is a pilot, you wouldn't

Q. THat is, you would agree it is accepted medical practice in this country? A. Oh, yes.

Q. Does this represent a change in medical practice in recent years? A. Well, that depends on the word "recent" in a sense.

575 I started myself in 1951. Yes, I think there has been considerable change even since 1951 in the sense that the whole process of pregnancy used to be considered the kind of thing where you almost put a woman to bed in cotton wool and put her on a pedestal and held her hand and patted it and so on. But that has increasingly gone out the window, as have lots of attitudes towards women in general, I suppose.

So it is a hangover from former days of considering that women were hardly capable of doing anything even in a non-pregnant state.

Q. Are there certain complications or abnormalities which occur during pregnancy which may require her to cease her usual activities? A. Yes, indeed.

Q. What percentage of women have complications or abnormalities that interfere with their normal activities? A. Well, let me answer that by saying ten percent of pregnant women will miscarry. As a consequence at the time that they have their miscarriage, which is equivalent to the time of delivering a baby except that it is less than 20 weeks of age, they would be disabled in the having of the miscarriage.

576 There would be a second period of disability which would be the disability of labor and delivery itself.

Q. That would be all women, that would be all women? A. That's right, that would be all women.

There would then be a certain group of women who would be disabled by virtue of two groups of conditions.

THE COURT: I am sorry. I didn't hear that.

THE WITNESS: I am sorry. Of two groups of conditions.

The one would be that group of conditions I alluded to before where the rapid weight gain of pregnancy brought out an underlying disease which was there in the non-pregnant state, like diabetes, and that might or might not cause disability depending on how well it was under control very much in the same way as a man gaining weight rapidly might suddenly decompensate in diabetes. And it would then depend on whether he could control it or not.

Then there would be a second set of disabling conditions in pregnancy which arise purely from what I would call conditions of the fetus and placenta, which is obviously

what differentiates from the non-pregnant state.

And the two most classical ones of those would be one, the condition in which the placenta lies below the infant

577 and consequently episodes of bleeding might occur in pregnancy. And the second major one would be the one in which a part of the placenta would be detached from the lining of the uterus, so-called abruptio placentae or premature separation of the placenta.

So these would be conditions then that arise solely from the fact that one has a placenta in the uterus.

So there is the process of miscarriage, there is the process of delivery, there is the bringing out of possible underlying diseases, as in anybody who rapidly gains weight, and there are the specific peculiarities of having a placenta inside a uterus.

Q. I believe you have not mentioned the toxemias and preeclampsia? A. Yes, I do, and do not bring them out. Toxemia and preeclampsia are diseases which are defined by the occurrence of a high blood pressure, that is fundamentally what the disease is about, and the cause of the disease is really unknown so that there is still some debate as to whether in fact this is pregnancy bringing out an underlying tendency to hypertension in the first place.

So while by definition because the word "toxemis" is only used in pregnancy, therefore by definition only the

578 pregnant can have it, the signs and symptoms are all signs and symptoms of high blood pressure, which obviously the non-pregnant woman or the male can also have, and then the issue becomes whether it is something in pregnancy that brings out the underlying tendency to hypertension as would rapid weight gain of other kinds.

Q. You have also failed to mention ectopic pregnancies.

Where do those come? A. Ectopic pregnancies would obviously be disabling, they would all occur, or overwhelmingly they would occur prior to the 20th week of pregnancy and they would require surgery.

Another one that would be disabling which I forgot would be those particular kinds of pregnancies that lead to what we call a hydatidiform mole or chorio-carcinoma, those being conditions in which after the fertilized egg implants in the uterus instead of the fetus developing normally it is actually the placenta which develops by itself and forms a mole-like structure that looks like grapes, and which may turn malignant and then be called a chorio-carcinoma. So these are peculiarities of the pregnant state due to the presence of a placenta and a conceptus.

579 Q. What percent of women have these abnormalities and complications? A. I said ten percent of miscarriages, but that is, you know, usually a one or two-day affair.

In terms of the general so-called complications of pregnancies I would put it at about ten percent, but I wouldn't want to put that into a textbook. I would like to go to a textbook and figure up the numbers to give you a figure, but it would be approximately of that order.

Q. So that is ten percent in addition to the ten percent that have miscarriage, is that correct? A. That is correct.

Q. And the miscarriages you talk about, you said were predominantly the first trimester? A. Oh, overwhelmingly. By definition it would have to occur before the 20th week. Of course by obstetrical definitions we talk of premature delivery between the 28th week and 40th week, or however long you want to go.

So by definition all miscarriages would occur before the 20th week. They would overwhelmingly occur before the 10th week.

So the vast majority of miscarriages are the very early affairs.

580 Q. Are miscarriages normally attributed to a diseased condition or an abnormality in the fetus? A. The vast majority of miscarriages are due to defects in the fetus and/or placenta rather than in terms of a woman. There are some that have an underlying basis in disease of women, we think, like thyroid disease. But the mythology surrounding miscarriages is as enormous as the mythology arising over pregnancy.

Q. I believe we talked about ectopic pregnancy. Will you, please, define ectopic pregnancy? A. An ectopic pregnancy is a pregnancy which implants in a location other than the uterus. That might be a tube, ovary, it might be an abdominal pregnancy.

Q. And none of these pregnancies develop to a full-born normal child? A. The very rare abdominal pregnancy may.

Now, I suppose I ought to point out that the sum total of ectopic pregnancies is one in 200 of all pregnancies and that I have incorporated those in the ten percent as miscarriages.

Q. Does an ectopic pregnancy ever miscarry itself without surgical intervention? A. Well, the usual thing, if it isn't picked up and nothing is done, is to
581 rupture so that the tube, the Fallopian tube in which the pregnancy sits will rupture, and one of two things will happen. There will be either massive blood loss and the woman may die if surgery is not intervened with. There is the case of a silent rupture of an ectopic pregnancy in which on a subsequent occasion one may find the products in the abdomen and no one even knew she

had an ectopic pregnancy, but that would be extremely rare. Overwhelmingly it is a condition that requires urgent abdominal surgery.

Q. And if immediate obdominal surgery does not take place what is the normal result? A. Well, the result overwhelmingly would be death by exsanguination. So fundamenally a ruptured ectopic pregnancy is, in my opinion, probably the bloodiest things ouside of a rupture of an internal artery where you standardly find three or four pints of blood in the abdomen.

Q. And it is uniform practice if a doctor discovers an ectopic pregnancy to institute immediate surgical procedure? A. Absolutely. Absolutely.

Q. Does the normal birth of a full-term child always result in a period of restriction of usual physical activities? A. Yes, it usually does.

582 You mean the actual childbirth process, or do you mean the period thereafter?

Q. The whole, from the time of labor there is a period from the onset of labor to a period after delivery takes place in which a woman is restricted, is that correct? A. That is correct, yes, ma'am.

Q. How long does this period of restriction of normal activity usually last in the instance of normal childbirth? A. Well, that is subject to very much the same analysis as the restriction on activity before delivery.

The standard kind of mythical routine is to say to a woman who has just delivered to come and see you six weeks postpartum.

When one analyzes why it is that one says that, it is because one can expect that if in six weeks all is not back to normal then one is dealing with a condition which thereafter may be called abnormal.

That by no means implies that it is not until six weeks that normalcy recurs. As a matter of fact there is a great deal of evidence in the literature that women recover normal functions after childbirth earlier and earlier and in direct proportion to their socio-economic status. That is to say there have been studies done of when women
583 recover menstruation, of when women recover ovulation, and it is clear with each advancing decade this process is occurring earlier after childbirth than before in very much the same way as little girls now begin menstruating much earlier than they did in our great grandmothers' days.

Overwhelmingly this is, as I said, associated with socio-economic conditions. That is to say, the higher the socio-economic condition and the earlier little girls start menstruating the earlier women recover normalcy after childbirth, and it is suggested that they will have the menopause at a later date. So it is not at all uncommon for people to be perfectly capable of going back two weeks after childbirth.

The practice, again, is to individualize. I think probably the largest practice numerically consists in women going back to work well before two weeks after pregnancy. These are the women who have several children at home and take care of them, which is as hard a form of work as any other type of work.

So overwhelmingly what happens is that I think most husbands, you know, will grant their wives one week of no cooking, or five days of no cooking; but the speed with which women return to housework is certainly remarkable, depending on what kind of husband they have.

584 Q. Based on your experience, how many weeks after childbirth do you recommend or have you certified a patient? A. Oh, I have gone as short as two weeks where – what I have done really is to individualize it by what the need was for the woman to work.

Now, overwhelmingly I think it has been an obstetrical tendency to delay it because childbirth is about the only excuse that husbands give their wives to have a rest at all.

So the practice has been in that favor. But if there is anything at stake like job income or so forth, I have gone to two weeks.

Q. What is the average time between childbirth and the date you have recommended or certified a patient for going back? Could you state an average? A. I coundn't answer that. Overwhelmingly all of my early work was done in the setting of a university clinic and you tend to go by rote. It is like a factory in a sense. One processes things according to given rules and rule books.

And in those days it was overwhelmingly a six-weeks rule so that the six weeks postpartum rule is entrenched
585 in standard obstetrical mythology, just as anything else is. It isn't usually until one leaves one's house staff, intern, residency days and then one has to deal with individual private patients and their needs and their desires that one begins to individualize for a woman. And that is when you can go down to two weeks or three weeks or whatever seems to be appropriate to her particular life style.

Q. What to date was your intern where you had the processing on a mass basis? A. Oh, that was, let me see, 1953 to 1956 at Johns Hopkins where you had 3,000 patients per year and most of them were complicated. Of course, they were referred from all over Mary-

land, and under a system like that one literally has to work on safety-first principles.

Q. Given the opportunity to follow a patient through pregnancy do the complications which sometimes occur require any different medical procedures than illnesses which occur in non-pregnant patients? A. For the group of complications which I mentioned under the heading of the pregnancy bringing out underlying diseases, like thyroid disease, hypertension, diabetes and so forth, the treatment is essentially no different than it is for
586 diabetes and so forth of the non-pregnant massive weight gainer, if you like.

The special procedures that are required all come in under those cases which are peculiar to the fetus and the placenta like ectopic pregnancy, like abruptio placentae, like placenta previa, which are diseases that have no parallel in the male.

But common ones in men and women like heart disease, diabetes, and those, when they occur in pregnancy, are treated no differently than they are in the non-pregnant.

Males require different dosage to the extent that you are dealing with a larger patient, and it may require closer following to the extent that weight is constantly changing in the woman and may not necessarily constantly change in a man.

Q. Except for the difference in location, is the surgical incision inflicted by a Caesarean operation any different from that inflicted by an appendectomy? A. Well, usually they are in different locations. The Caesarean section would be central, so the location of entering the abdomen would be different. Obviously the location is different in that once having entered the abdomen the incision for a Caesarean is into the uterus and incision for the appendectomy would be to stay well away from the uterus.

587 Q. The surgical procedures are otherwise essentially the same? A. Well, both of them are openings and closings of the abdominal cavity.

The procedure thereafter is obviously different in that one is into the uterus and the other as a rule is into the appendix. Closure would once again be the same for both entities and the recovery period would be about identical.

Q. Is the same true of surgery for an ectopic pregnancy?
A. Yes, indeed.

Q. And that again is, the location may be more different than that from a Caesarean, may it not?
A. Yes, indeed, because in the ectopic pregnancy what is done is that the tube is removed. If you want to go by sheer appearance, the tube bears much more of a resemblance to the appendix than does the uterus bear a resemblance to the appendix. But again recovery periods and so forth would not be different.

Q. How many diseases does the medical profession know which are peculiar to pregnancy and do not occur
588 in non-pregnant females or males? A. I am sorry. May I have that again?

Q. How many diseases does the medical profession know which are peculiar to pregnancy and do not occur in non-pregnant females or males? A. Well, I have to differentiate. Let me differentiate three things. Pregnant female, female, and male.

Differentiating diseases between pregnant female and non-pregnant female are only those diseases which stem from the products of conception. That is to say, from the placenta and the fetus and the mal implantation and that type of thing.

Differentiating the pregnant female and the non-pregnant female from the male would be on the female side all diseases of ovary, tube, uterus, vagina and vulva.

And separating it on the other hand would be all diseases of testicle, scrotum, vas deferens, prostate, penis; so purely diseases restricted to the reproductive organs separates non-pregnant and pregnant females from males.

What separates the pregnant female from the non-pregnant are diseases peculiar to the contents of the uterus or of the tube to include ectopic pregnancy, contents of the repreductive tract.

589 Q. Do you know the reasons upon which employers rely to support their practice of affording income maintenance during periods of sick leave? A. I am not an expert in employer motivation.

Q. I would like to have you assume the following facts.

It will be the same question I showed the gentlemen yesterday.

MR. BATTLE: I don't think it is necessary to see it again as long as the record shows that my objection is the same.

THE COURT: Yes.

BY M. WEYAND:

Q. I am going to ask you to assume the following facts for the purpose of the next several questions.

Assume that the defendant GE provides income maintenance in the form of sickness and accident benefits for non-occupational sickness and accident absences because such payments are believed to increase production in three ways:

One, an employee who does not need to worry about a period of illness without any pay is a happier employee and therefore produces more;

Two, an employee afraid to go home when he or she
590 feels below par not only produces less, but has a bad effect on the productivity of other employees; and

Three, an employee who has income maintenance is able to take proper care of himself or herself by being economically free to take off work and stay off work for as long as is necessary to get well, so he or she comes fully recovered at an earlier date, the theory being that if he or she has no income maintenance he or she will continue working when he or she should be away from work and under medical treatment. A. I didn't get that last part. I thought there was a not that slipped in.

Q. The theory being that if he or she has no income maintenance he or she will continue working when he or she should be away from work and under medical treatment.

In terms of these reasons for granting sickness and accident benefits, is there from the medical point of view any less reason to pay sickness and accident benefits for disabilities from pregnancy and childbirth than in cases of other disabilities? A. Reasons, you mean?

Q. From a medical point of view is there any less
591 reason? A. Let me put it this way. I can't see any difference between diabetes in pregnancy and diabetes in the non-pregnant state except in one state you are pregnant and the other you are not.

Q. The same way about a woman in the hospital with labor and – A. Well, labor is something that is peculiarly female. So, you know, I can't draw a male parallel to it. But heart disease, thyroid disease, diabetes, any of these conditions are no different in pregnancy than in any other case.

Q. She has a complication: Is there the same reason for her to have income maintenance as there is for someone else from a medical point of view so she doesn't continue to work when whe should be home taking care of herself? A. The complications I have already stated are complica-

tions due to rapid weight gain bringing out an underlying disease, be it hypertension, be it heart disease, be it disbates and so forth. So the net result is a disease, whatever the cause is.

Those complications which one deals with in terms of the contents of the uterus or the reproductive tract are complications of hemorrhage.

592 Now, I don't know whether you consider a lot of blood coming from the vagina differently than a lot of blood coming from the rectum. It requires different measures, but it is the same blood loss, causes the same anemia. A ruptured uterus is as disastrous, I guess, as a ruptured ulcer.

So, yes, there are anatomical differences, if you like. The net result is disability in both cases. As far as the medical outcome from that point of view you have in both cases a disabled person who requires medical intervention.

Q. And if there was need of income maintenance to get the medical intervention to take care of herself, you would see any difference medically between the disabilities from the point of view from the need of income maintenance? A. I am sorry. I don't think I get the thrust of your question.

Q. In terms of it being disabling and preventing her from working is there any, from a medical point of view, any less reason to provide her with income maintenance during the period she is disabled than there would be to provide the man who was hemorrhaging, as you say,

593 from the rectum? A. Well, you know doctors cost money. It isn't as if we treat females for free and treat males for fees. I mean, I have yet to hear anybody turn down money for medical or any other reasons.

Q. Now, have you ever considered whether or not income maintenance during the period a woman was disabled prior to delivery was important to the outcome of delivery?

A. Yes. Well, that is not the question you can answer in a single given case. The only thing you can say at this point is that there is very well established evidence in obstetrics as a whole that there is a correlation between income and the outcome of pregnancy both in terms of mortality of infants, indeed mortality and morbidity of mothers, in terms of the weight of infants and presumably in terms of IQ of infants, which is heavily correlated with weight. The excellence of the outcome is a direct function of socio-economic development, socio-economic development as expressed by a whole series of parameters, income, nutrition, education, quality of medical care. And in short all those things that are associated with buying power.

Q. I would like to have the marshal hand the witness Exhibits 98, 97, 98, and 99.

Are you acquainted with these studies? A. Yes, indeed,

594 I am. Which doesn't mean I know them by heart, but I know what they are.

Q. Would you state the circumstances under which these studies were conducted and your acquaintance with the manner in which they were conducted? A. Well, these are studies that were done actually overwhelmingly by a woman called Mary Grace Kovar, but they are a part of the kind of studies that have come out of the National Center for Health Statistics which produces a lot of vital health statistics in the United States and intermittently puts out studies on cross samples of the U.S. population, and particularly has one that is called the Natality Survey Followup. And these are all studies produced by that particular branch of HEW.

Q. Turning to table 17 on Plaintiffs' Exhibit 97, page 25. A. Excuse me for a moment. 97?

Q. 97 at page 25, table 19.

Is this one of the studies to which you referred in reference to the outcome related to socio-economic conditions? A. Yes, that is correct.

595 Q. And on 18 – A. Excuse me.

Q. These tables show that in terms – A. Well, these are data correlating family income as divided by less than $3,000 per year, 3,000 to 5,000 per year and over 5,000 per year.

And it then gives the infant death rates by the income of the family, children, second, third, fourth and so forth. It shows in every instance that the higher the family income is the lower the infant death rate is for each child.

Q Will you look at table 11 on page 21?

A. Sorry. I don't have a table 11 on 21.

Q. 12, I am sorry. A. All right.

Q. Would you state for us whether there are other studies as complete as this study has been in terms of the selection on a wide basis of – A. Well, that isn't located in table 12.

Oh, you mean in general?

Q. I am having trouble finding the right table. Excuse me a minute.

It was table 17, yes, 17 on page 25. A. Yes, that is the one that shows the direct correlation between infant death rates and lack of income. So the increase in

596 death rates in proportion to lack of income.

Q. Now, you said that in addition to the death rate the weight of the infant was of relevance? A. Yes, that is correct. So that what fundamentally comes out is that the lower the income group the larger will be the incidence of infants who are born prematurely, that

is to say, born at less than 36 weeks of gestational age, and the lower the socio-economic bracket, as measured by income, the smaller the weight of the infants for a given gestational age.

Q. Will you look at table five on page 17 of Plaintiffs' Exhibit 98? A. Page which, excuse me?

Q. Page 17, table five? A. Yes.

Q. This is the table showing correlation between birth weight and income, is it not? A. That's right.

Q. And what does this show in relationship to birth weight to income? A. Well, if you look at birth weight 2,500 grams or less, which is what we call prematurity, then you find that as income goes up, namely

597 from the under 3,000 category to the 4,000 and so forth, as it goes up you will find that the fraction of premature birth decreases or conversely, as income goes down, the fraction of premature birth increases.

Q. What does the effect of premature birth have on the future welfare of the child? A. Well, again, one can't take a given case. One has to go to the general statistics as they are known, which is that there is a direct correlation between the severity of prematurity or birth weights less than 2,500 grams and subsequent intellectual performance, not just in terms of IQ, but in terms of handicapping such as cerebral palsy and so forth.

Now, in terms of handicapping conditions like cerebral palsy, then one is dealing with a very premature group, that is to say, overwhelmingly with a group of less than 1,500 grams in weight at birth.

In terms of IQ and other performance the effects are seen even between 1,500 and 2,500 grams.

So in summary, the greater the degree of prematurity the greater the chances of central nervous system damage, is really what we are talking about.

Q. Is it easier for an employee to malinger for the purpose of collecting sickness and accident benefits for a
598 disability resulting from pregnancy than from abuse for using any other disability? A. What would you call malingering?

Q. Making or faking that he had pain and complained that is not well supported in terms of fact? A. Well, as I said before, the pregnancy normally, the normal pregnancy is a physiological process. Now, if one wants at that point to claim a deviation from physiology the deviations are of two kinds. One, that I have already said, is comparable to the male gaining a lot of weight normally bringing out diabetes or thyroid disease and so forth; so it would be no easier or more difficult to malinger in terms of phony diabetes or phony thyroid or phony heart disease in pregnancy than non-pregnancy. So one is left then with malingering on the basis of things that are recognizably due to the uterine contents. You know, intrauterine, and that is easily checked.

The uterus is an awfully superficial thing, and under the skin. Access to the mouth of the uterus or the cervix is extremely easy. So it would be very difficult to fake those conditions which are peculiar to the uterus and to the uterine contents. Separation of the placenta, I don't think you could fake.

Vaginal hemorrhaging is impossible to fake because all
599 you have to do is check and see if the blood is coming or not coming.

So I don't really see where you could – where it would be easier to hide things in an organ that lies right under the skin that you can look at through a speculum then it would be in terms of, you know, whether one's liver was acting up or whether one's ulcer was acting up. It would be much more difficult to pick up whether some-

body's uterus was acting up, because the uterus is a very accessible organ.

Q. Are the majority of pregnancies in the United States planned today? A. We are getting into statistical problems.

You mean are the majority of the 3,200,000 that we have per year, or are you including all conceptions?

Q. I was asking, what was the medical profession's view of the extent to which pregnancy today is a planned event? A. I need to know your definition. Are you talking about conception or delivery?

Q. I am talking about conception. A. Oh. I would say that the majority are, if not planned, then accepted. So that at the present time I think we run
600 about 3,200,000 or so births. We probably nationwide run about a million abortions. That would be an approximate figure.

And now if you now want to split off the 3,200,000 births among those which are unwanted or unplanned, I don't think I would have any figure on those 3,200,000. That is more easily done on the basis of conception. I would say the majority are still planned.

Q. Is there available to the public today any completely effective contraceptive? A. Total abstinence.

Q. Aside from total abstinence? A. None. No.

Q. How reliable is the pill? A. Well, the reliability is something that is usually described in terms called the "use-failure rate." That is to say, the number of conceptions occurring when it is used in the way the population uses it. And for the pill by and large one ascribes a one percent use-failure rate, meaning by one percent that one would have one pregnancy in 100 years of exposure to intercourse. That is the way it is defined.

Q. And the morning-after pill? A. Well, the morn-

ing-after pill for one thing is not universally released yet, so it wouldn't even be accessible.

601 In terms of how effective it is, we really haven't had a any good studies for the simple reason that nobody has looked at what stage in the menstrual cycle people have had intercourse, in the cases in which the morning-after pill is used. So I think the morning-after pill shouldn't even be considered as an accessible method to women at the present time.

Q. The IUD? A. Depending on the type, about the lowest failure rates have been about four per 100 exposure years.

In recent studies with some newer types it has gone up to seven percent.

Q. The diaphragm? A. Well, the lowest one in the literature that I know of I think was a two percent failure rate in a high-income group in Indianapolis. The highest failures rate I think ran something like 30 to 40 in a population in Puerto Rico.

Now, the problem with all of these things, all of these figures, and I wrote a chapter on it once, the problem

602 with it is that there is a lowest failure rate ever reported and there is a highest use-failure rate ever reported. And the highest use-failure rates on almost all methods, barrier methods, diaphragm, foams, condoms, and so forth, all sit between 30 and 40 per 100 years and all come in the lower socio-economic groups. Whereas the highest effectiveness rate, the lowest failure rate overwhelmingly sits in upper socio-economic brackets, and for the diaphragm, as I recall, this is two percent in this Indianapolis study.

Q. Are there medical reasons for not taking the pill?
A. Yes, indeed, there are.

Q. What are they? A. The presence of any tumor

of the breast or uterus, even benign. Hypertension, any form of heart disease, liver disease, renal disease, disease of the circulation and cardiovascular system.

Q. Are there medical reasons for not using the IUD?
A. Well, there you get on much more controversial ground. Some would say do not use it in those who have never either had a miscarriage or a child.

Some would find previous Caesarean section to be an absolute contraindication. Some even find a fixed retro-

603 verted uterus to be a contraindiction.

These are the kind of things for which respectively you exclude people from going into that group.

When you say what are the contraindications, perhaps the proof of the pudding is in the eating of it. And there are IUD's expelled in, you know, rather large numbers, about 20 percent of all IUD's are expelled. You might question whether that was the appropriate case in which to use it.

I don't know of many people who would take an expelled IUD and reinsert it more than one other time.

Q. Are there medical reasons for not advising an abortion? A. You mean for advising not to have an abortion or not advising?

Q. If a woman has used the contraceptive and it does not be successful and she wishes to not have a baby are there medical reasons for advising her not to have a voluntary abortion? A. It depends, first of all, on how you view abortion in the first case. So that is, you know, a question of whether you count a fetus into the human race or you don't

If you count it into the human race there is excellent reasons for not advising an abortion.

604 If you count it out of the human race and see no problem with it then what you are asking for is straight-

forward contraindication to abortion. And then I think one would steer away from most people with psychiatric problems

Contrary to general belief one prefers not to do an abortion in the severely psychiatrically disturbed.

One would stay away, I think, overwhelmingly in women who have congenital heart disease which will result in spontaneous miscarriage, that will occur anyway and in which it is a much gentler process to have it occur spontaneously than surgically.

So, yes, there are contraindications.

Q. If it was decided to have an abortion, are there reasons why an abortion might lead to other complications, abortion itself have any problem? A. Yes. Any medical procedure has certain problems. In part it would – the statistics would depend on when in pregnancy it was done. The figures for the second trimester of pregnancy, that is after the 13th week, being considerably worse than the figures prior to the 13th week, and in which there is beginning to be some considerable question as to whether the first pregnancy should be aborted at all. That is to say, there is be-

605 ginning to be some considerable evidence that to terminate a first pregnancy considerably increases the chances in subsequent pregnancies of premature delivery.

So then there would be a question of while it might be desired to interrupt this pregnancy a problem might arise in the next pregnancy by virtue of having done it in this pregnancy.

I don't know if that answers the question.

Q. Is there a segment of the medical profession which refuses to perform a demand abortion? A. Well, I think probably the entire medical profession would say that it does not do abortions on demand, but an awful

lot would say that we do them on request,

And there are a whole number of people, you know, they would still insist that they voluntarily acceded to do it.

Yes, there is a large section that would do none at all. Some would do it only for lifesaving circumstances or in cases of rape.

And then a third section that picks and chooses for a variety of personal reasons.

So it is certainly not a universal phenomena in the medical profession.

Q. Are there hospitals which refuse to allow the use

606 of their facilities for abortion procedures when it is a voluntary demand abortion? A. Well, to the best of my knowledge all Roman Catholic hospitals in the United States, one-third of the private hospitals that is, and a very large numbers of Baptist hospitals. I don't know what the figures would be on that.

And then a number of hospitals in which the community has decided that it will set guidelines for who shall and who shall not be aborted.

The community in this case represented by the Board of Trustees or in the case of city hospitals by whoever the city fathers of the community happen to be.

Q. Outside of urban areas are there substantial areas in which voluntary abortions as a practical matter is not available? A. Outside of urban areas? Oh, yes. Oh, yes.

Q. Could you indicate, are you aware at all of the extent to which there are areas which – in which a demand abortion is not available? A. No. I couldn't do it on a statistical basis. I know, you do recall, that recently, not just a question of abortion, but a question of sterilization arose in Billings, Montana, in which a

particular hospital was ordered to do a tubal ligation which it did not want to perform and, as I recall it,
607 the key issue in the particular case was that it was in a woman whose abdomen was opened for a Caesarean section and consequently the sterilization was ordered in those class of cases in which it accompanied Caesarian section, otherwise the woman would have had to have both the Caesarean and then later an elective sterilization. But I think it was also distinctly said by the judge in the case that he was not judging on all cases of sterilization, let alone on abortion.

So I would think in those distinct areas in which a Catholic or Baptist hospital might be the only hospital available in a community one would have an extremely difficult time having an abortion on request.

Q. Are you acquainted with the religious convictions of various well-established religions which preclude members from the use of contraception without a serious violation of religious beliefs? A. Yes, I am acquainted.

Q. Would you state the extent of your experience with this issue? A. Well, I was Deputy Secretary of the Pope's Commission that dealt with population and birth control.

That does not denote in any sense any agreement, it just denotes a sense of being well acquainted with the
608 subject.

Q. Do religious groups regard a voluntary abortion as prohibited by their religion?

THE COURT: If it will save time, I am a Catholic.

BY MS. WEYAND:

Q. There are other groups than Catholics, are there? A. Yes.

In terms of abortion a large faction of Baptists and Orthodox Jews.

Q. Does a person who becomes pregnant voluntarily bring on herself the disabilities that may befall a pregnant woman in any different respect than the manner in which a person who drinks alcohol voluntarily brings on himself a problem of alcoholism? A. Well, I don't think that anybody engages in intercourse in order to acquire the disability, and I don't think anybody drinks alcohol in order to acquire alcoholism.

I think that they have to be unfortunate side effects of the practice that one gets into.

Q. Would you comment on the voluntariness of a
609 skiing accident as compared with the voluntariness of the woes that may befall a woman who becomes pregnant? A. I don't think anybody goes skiing to break his leg, I presume.

Q. And would you compare the voluntariness of injuries in street fights when a man gets in a fight if he gets injured, is the voluntariness different than that of a – A. I think the predictability is greater, probably.

Q. What about the injuries in drunken driving? Are they the same type of voluntariness as is involved in – A. Being hit by it or doing the driving?

Q. Doing the driving. A. I don't think anybody drinks in order to cause car crashes.

Q. Given the fact that only women become pregnant, are there other categories of employees as to whom you can predict that they may have conditions peculiar to them which may be medically disabling at some time during their employment? A. Oh, yes, lots of them.

Q. What would you mention? A. Well, a classical one would be sickle cell anemia in Negroes.

610 Hemophilia would be an obvious one as something that women would transmit out but only men would get.

Well, then, are you talking about absolutely peculiar or statistically different?

Q. Statistically different. We have got the absolutely peculiar. A. At the present time coronary heart disease would be overwhelmingly a male disease rather than a female one.

Breast cancer would be overwhelmingly female rather than male.

Prostatitis would be overwhelmingly male rather than female.

So, yes, there are differences in incidences of disease, not just by sex, which is one genetic differentiator between human beings and a rather obvious one, race, which is a genetically easily picked up difference between human beings, and then for a set of other conditions like hemophilia and so forth you would have to go much more sophisticated type of selection of populations that would be at higher risk.

You could do it for non-genetic conditions, that is to say, in cases of predictability of diabetes, one could
611 screen on the basis of glucose tolerance tests, which would be two or three-hour procedures in which by administering a certain amount of glucose you could find out how well the person was capable of metabolizing the glucose and you would subsequently be able to foretell that this category of people with poor outcomes of tolerance tests would be prone to diabetes.

So this is in a sense dependent on the degree of screening that one does.

Q. I take it that only members of the Negro race can get sickle cell anemia, is that correct? A. Yes, the trait is carried, but one rarely sees it, along the

Mediterranean in some people, but for the United States it would be overwhelmingly, as a matter of fact, solely Negroes.

Q. So if an employer refused to pay sickness and accident benefits for sickle cell anemia he would be discriminating against the black race, would he not? A. Well, I don't want to use the word "discrimination." He would be dealing with an entity which could only apply to Negroes.

Q. And he would be dealing on a basis that was not scientifically different from other diseases that other
612 people got, is that right? A. That is correct. Whenever there is a genetic predisposition to any disease, be it sickle cell anemia, be it diabetes, hemophilia, Tay-Sachs disease or what have you, the only way one can pick it up is by a genetic screening. And of course screening by means of the eye – it can be done in screening Negroes from whites or women from men or, you know, that is the simplest genetic test that you can apply in a sense. Doesn't need very sophisticated equipment.

Q. Can you give any plausible scientific reason why health problems peculiar to women should be viewed differently for purposes of incidence in employment from the health problems peculiar to other categories of employees? A. I don't think I caught that question.

Q. Can you give any plausible scientific reason why the health problems peculiar to women or peculiar to blacks should be treated differently for purposes of incidents of employment than the health problems of other employees? A. Well, there is no medical reason for a difference.

I can't comment on why it is done because I am not an industrialist or anything like that.

Medically it makes no difference whether you bleed one way or bleed the other way, you have got to stop
613 the bleeding.

Q. Whether you are disabled by one condition or the other from a medical point of view.

What are the social consequences of a policy of depriving pregnant women of the opportunity, income-producing activity, without substituting financial compensation in the way of income maintenance during the period preceding childbirth? A. Well, I don't know. I can't give a blanket social consequence answer.

The pertinent obstetrical problem that one sees again and again is the correlation between low income or absence of income and low birth weight of children, prematurity, and all the problems that arise as a result of that, namely defective development of central nervous system. That would be medical.

That is medically a consequence.

I don't know whether you mean by that that it is socially a consequence. It then becomes socially a consequence in terms of the upkeep of facilities for cerebral palsy, for mental retardation, and this kind of thing.

Q. What is the relationship from a medical point of view in terms, say malnutrition is the lack of medical–
614 what – why does low economic condition bring about the results that you suggested? From a medical point of view what do you attribute it to? A. There is one obvious one that I think is not the main one, and that is the inability to pay for medical care. That would be one.

Then a consequence is not adequate and early enough a way of picking up those conditions for which one should in fact be hospitalized and undergo some therapy. That is not the only problem.

I think the second problem is very highly a nutritional

one, overwhelmingly a question of protein nutrition.

That is the one in which then the production of the small child or a smaller-than-normal child is an indicator of the state in which the woman is at that point nutritionally.

So that there are excellent data, people of very high socio-economic brackets suffering severe malnutrition as existed notably in Holland in the later autumn through the winter of the year 1944 when the diet in Holland suddenly plunged down severly because, you may remember, the American-British armies didn't manage to get across the line during that winter and Holland was isolated and it was very clearly evident in increased infant
615 mortality, in marked decrease in birth weight, in marked decrease in birth weight per given age, in marked increase in prematurity. Not because the housing was bad, because they were living in the same housing as they did before the troops arrived. The one variant was malnutrition.

In how far the animal data that exist are worth even comparing is unknown, but certainly in these cases severe loss of weight of newborn animals occurs, and excellent evidence exists they can't fight their way out of a maze or their way through a maze.

So in summary, the economic effect that I would think would be the most deleterious, inability to get medical care or equivalent medical care, and secondly, lack of income producing, lack of adequate nutrition as particularly expressed in proteins which are usually the first thing to go in budgetary difficulties, you know, meat prices and so forth.

Q. Thank you. I believe that is all the questions. Thank you very much.

THE COURT: Help the witness down. We will take

a luncheon recess.

616 (The witness stood aside.)

THE COURT: We will recess until 1:45.

(A recess was taken at 12:40 to reconvene at 1:45.)

(The witness resumed the stand.)

CROSS-EXAMINATION

BY MR. BATTLE:

Q. Doctor, I hope that all these years I haven't been laboring under the misimpression that birth is a blessed event. You agree that it is, isn't it, in most instances? A. In most instances, yes.

Q. Now, you recall, do you not, giving testimony before the New York State Division of Human Rights in the Stromberg-Carlson case? A. In Rochester?

Q. Yes. A. Yes

Q. Now, do you recll that in that case you testified that in applying your definition of disease, sickness, and illness, that pregnancy per se was none of those? A. Yes. That is correct. I seem to recall saying that I thought it would be strange if the human race survived on

617 the basis of a disease.

Q. Yes. A. That's right.

Q. So I may assume as we proceed that that remains your opinion, which is – A. Yes, indeed.

Q. – that pregnancy is not a disease? A. That is correct.

Q. Nor is it an illness, nor a sickness? A. Yes.

Well, illness and sickness, I think I have said throughout is something that the patient perceives, so, you know, a patient may still feel sick in the absence of a disease even –

Q. Yes. A. I think I said I tend to think of the words, "I feel ill" and "I feel sick," as being perceptions

of the person whereas a disease is something that is diagnosable by a physician as being abnormal.

THE COURT: You mean is subjective and one is objective?

THE WITNESS: That is precisely right. I would use the work, Your Honor, of disease as being objectively

618 noticeable and illness and sickness as subjectively a perception of the individual.

BY MR. BATTLE:

Q. Now, Doctor, I was curious about one other thing that you said. I had understood all along this to be the case, that in your experience most working women who were pregnant were able to work right up until the time of the delivery. Do you recall that? A. Yes, I said that I would so advise them unless I saw a contraindication which might be a girth contraindication in the case of climbing a telephone pole, or the appearence within this normal process of a sudden disability, bleeding, or some other such thing.

Q. I think you put it unless there were problems of fit, so to speak, problems of girth? A. That's right.

Q. Then you would recommend continuation of working up until labor or just before delivery? A. Yes.

May I put it perhaps in the way I can say it best which is I see no contraindication to working unless a medical contraindication other than simple, straightforward pregnancy suddenly appears.

Q. Well, I thought one of the impressive things that

619 you said was that you had personally observed this taking place among staff members of the hospital who were– A. That's right.

Q. – knowledgeable in this field and so forth? A. Right.

Q. And I assumed, and I want to be sure that this is correct, that you have also observed it fairly consistently in your own practice? A. Yes. You mean women continuing to work?

Q. Yes. A. Yes, indeed.

Q. Your patients who want to work and you encourage them to work up until – A. I might say my wife, who was a nurse, worked right through.

Q. Yes. Well, now, I want to be sure that we are straight on this.

Your wife would be in a category, female staff members of a hospital would be in that category, and patients that you see would be in that category? A. That's right.

Q. And would that be true right along until recent
620 dates to the present time, would this impression that you have still exist? A. Yes. My impression –

Q. That women that you have still exist? A. Yes. My impression –

Q. That women that you see – A. That women increasingly work in pregnancy that doctors increasingly allow women to work in pregnancy rather than saying by some arbitrary calendar date you must stop.

Q. Yes. Dealing with this group which you have defined, and that section of it which would include your patients, how many would you say, how many women would fall in the category of your patients since, say, the first of the year?

Just roughly. I certainly don't want to hold you to it. A. Since, say, the first of this year?

Q. Yes, sir. A. Oh, I though I stated that at the present time I see only complicated cases.

Q. Oh. A. I thought I made that clear very early in the testimony that my present obstetrical practice consists not of a primary practice but of other physicians

bringing me in as a consultant to complicated cases so that what I am seeing at the present time are the com-
621 plicated cases.

Q. So you would make a distinction between the patients that you now see – A. Oh, yes, and those –

Q. And the patients that you referred to in the category – A. Yes, I am afraid that is the fate of every professor, you increasingly get the abnormal people thrown at you.

Q. Dealing with the patients that you now see on a consultant basis – A. Yes.

Q. – approximately how many have you seen since the first of the year? A. Let's see. Where are we now?

Q. This is July, mid-July. A. Oh, something like 40, I would think, in pregnancy.

Now, I do see non-pregnant contraception problems, abortion.

You mean of pregnant ones?

Q. Pregnant ones. A. No more than 40.

Q. 40.

622 Would it be less than that? A. Likely. I haven't counted it.

Q. I am not holding you to be exact. A. To give you a description of what happens, somebody walks in my office and says, "I have got a problem on the floor, will you, please, come and consult and advise on it?"

Q. Have you been required to deliver with respect to any of these patients with complications? A. No.

Usually – what usually happens is I decide whether we have to have a Caesarean and somebody else does it.

Q. You advise what is to be done and somebody else does it? A. Yes, sir.

Q. Doctor, going back to the classification question of

pregnancy against disease and illnesses. I think you also agreed with the questioning of your attorney in the Stromberg-Carlson case that pregnancy was a normal physiological function? A. That is correct.

Q. You have testified, as I understand it, that aside from the ten percent of miscarriages among pregnant
623 women there is an additional approximate ten percent of pregnant women who experience some type of abnormality, is that correct? A. Yes, sir.

Q. Now, let's deal with the miscarriages separately.

That ten per cent category, would I be correct in assuming that the vast majority of the miscarriages occur during the first three months, approximately? A. Yes, indeed.

Q. And would I be correct in assuming that of that group the vast majority do not require hospitalization, or would that be too broad a statement? A. We get into difficult statistics, but let me put it this way. If they require hospitalization it is by and large in and out the same day.

In the vast majority of people – well, I shouldn't say the vast majority because I may have to define vast.

Q. I think we know what you mean. A. Overwhelmingly women will miscarry at home, you have some cramping, a little bit of bleeding, go to the bathroom, say I passed some tissue, which is frequently the fetus, then
624 continue bleeding and they call their obstetrician and say something has happened and he, for the sake of convenience, or not, will say, "I will meet you on the delivery floor of the hospital." He arrives at the hospital, examines her. If he feels that any part of the placenta or afterbirth is still retained he is likely to give her some shots to try to make her expel it or take her into the emergency operating room and do a curettage. And it is sort of an in and out phenomenon within one day, by and large, particularly a very early miscarriage.

Q. Do you have an approximate percentage of miscarriages that occur during the first three months of pregnancy? We have talked about it being the vast majority. I want to see if you can pin it more precisely. A. Certainly. I would say certainly – well, certainly 90 per cent of spontaneous miscarriages which occur occur prior to the thirteenth week.

Q. What you previously described is the typical way that this group of miscarriages occur and the typical type of treatment, in and out of the hospital? A. That's right. That's right.

Q. Now, let's go now to the remaining ten per cent of pregnant women who suffer statistically some type of abnormality.

625 Now, am I correct in assuming that in that ten per cent statistic there are those women who suffer abnormalities that do not result in disability or hospitalization? A. Yes, there are some of those.

Q. I think you so testified in the Stromberg-Carlson case? A. Yes, indeed.

Q. Does anyone know what part of the ten per cent fall in the category of so being so slight in terms of abnormalities as not to require hospitalization or resulting disability? A. I think at the time Mr. Battle, that I said that I didn't know. I could, you know, I am sure I could spend a week on it and figure it out from various books.

I think I also said that those figures were more likely to be contained in general health insurance sources than among the obstetrical profession. That is to say, the average time of hospitalization per woman would be more likely known by Blue Cross and Blue Shield than they would be by a professional obstetrician.

Q. Would you have a feel for it that you could ex-

press in approximate terms?

If you don't –

626 A. If I did it would be a guess and wouldn't be academically worth anything.

Q. All right, sir.

Well, now, of the ten per cent, which includes these that we have discussed at least to some extent, and I suppose you would agree it would be to a significant extent at least, these that don't require hospitalization or no disability, do you have trouble with my word "significant"? A. No. I just sit here frustrated thinking that one run-through of the IBM cards on a service could tell us because it seems to me what you are asking here is what fraction of all patients that first enter into an obstetrical service in the out-patient department are actually hospitalized prior to being hospitalized for labor and delivery.

Q. That is the reverse of my question. A. Yes.

Of that I would have to say that the 14 years that I spent at John Hopkins would not give a good run of the cards because it is overwhelmingly a hospital that wouldn't even deliver normally pregnant women and selects for pathology.

So I am trying to think of where would one find the statistics of what fraction of women walking into a pre-

627 natal clinic in the United States gets hospitalized.

I have a wild guess and say five per cent maybe or, you know, that may be high.

Q. Well, recognizing it as a wild guess, your feel is that of the ten per cent that we are talking about there are about five per cent that don't need to be hospitalized? A. Yes, I would think so.

Q. On the disabilities, and I am holding you to that only as a guesstimate. A. Let met give you an

example maybe: Placenta previa, the placenta lying under the baby and causing bleeding, is the kind of a situation in which a woman bleeds, calls her obstetrician who may bring her to the delivery room, do an examination under sterile conditions, and will say if the cervix, the mouth of the uterus, is closed, you can go home again.

I would not count that as a hospitalization. That is rather like having a visit to a doctor's office, in a sense.

So if one talks about true hospitalization, yes, I guess probably less than five percent, but I can't – I say that with due circumspection.

628. Q. I think I fully understand that.

I just wanted your experience as a matter of how you felt about it more than how you would pin it down. A. Right.

Q. Now, Doctor, of those who – oh, we will put it this way. I think that in this group also you made the division between the women in a pregnant state who suffer from an increase or bringing out, I think as you stated, of a pre-existing disease, that is group one, basically, I think; and the other group are those who suffered from some disease because of the presence of the fetus and placenta, is that correct? A. Yes, sir.

Q. Now, directing your attention to the first group, that concerned pre-existing disease, is it your medical opinion that in those cases the thing that arouses the pre-existing disease to a point where it becomes troublesome, is the gaining of weight rapidly? A. Yes. Yes. I think it is overwhelmingly the rapid gain of weight, very much like you see an occasional male who suddenly becomes obese and demonstrates his diabetes or his heart disease.

Now, I should perhaps add one other classification. That might be, and I don't know whether it would oper-

629 ate directly or indirectly, but let me get back to that, it would be the condition, the condition of an increased flooding with hormones that occurs in pregnancy.

Now, when I say direct versus indirect, that may be that the rapid weight gain operates through a hormone influence. But certainly that same bringing out of a disease that is underlying, we see in patients who go on the pill occasionally.

That is to say occasionally you see patients who go on the pill in order to prevent pregnancy who while they are on the pill develop problems of weight gain, problems of thyroid, problems of high blood pressure, and so forth.

Those are then considered to be contra-indictions to the use of the pill or side effects of the use of the pill.

So I wouldn't want to say that that weight gain cannot act indirectly through hormones as hormones may act.

Q. I see. All right. A. It may, as a matter of fact, be that in the rapid weight gain of the male the hormone may be the problem, you know, that triggers off the other phenomena.

Q. Yes, sir.

Well, now, may we go back to the category of aggra-
630 vation or bringing out of the pre-existing diseases? And I want to just ask you something about the ones that – diseases that typically appear in this category.

And I think you mentioned on direct examination diabetes? A. Yes.

Q. I think you mentioned hypertension and thyroid? A. Yes.

Q. Heart disease? A. Yes.

Q. Would you also include kidney disease, disease of the colon? A. I haven't ever been able to ascribe

colon disease to weight gain unless it be enormous constipation.

I think by and large diseases of the gastro-intestinal tract in as far as they exist in pregnancy have been ascrimed more to the harmone effect than to the weight gain effect.

Diseases of the kidney I have not been able to ascribe that way either.

If there is a disease of the kidney it is usually secondary to a cardiovascular problem.

Q. The reason I asked the question, the doctor who testified yesterday for the plaintiff included those two
631 diseases and I was curious to know whether or not–

A. Due to weight gain?

Q. No. A. As being brought out by pregnancy?

Q. Yes, sir.

As being typical of the class that could be brought out by pregnancy. A. Yes. I might quibble with him on the renal disease. I don't know what renal diseases he refers to. I suppose what he means is actually urinary tract infections which are more frequent in pregnancy.

I think by and large the urinary tract infections have been ascribed much more to the hormones of pregnancy, particularly to progesterone.

Q. If I may interrupt, he said kidney disease without qualification. I don't want to burden it. A. There are certainly a class of kidney diseases which are brought out in pregnancies. The common one of which would be urinary tract infection.

Q. Yes. A. In which, to the best of my knowledge, rapid weight gain in males is associated with it as well, but I wouldn't want to say it was the rapid weight gain that did it.

632 Q. Let me make sure I understand what you mean.

By the rapid weight gain with respect to these pre-existing diseases, and let me put it this way:

Assume that a woman in her eighth month of pregnancy develops from a pre-existing condition, a weight trouble, put it that way, diabetic state that requires medical attention, insulin or a changing of diet, and in the course of the pregnancy she gained 22 pounds.

Would it be your conclusion that if the same woman at the same time in her lifetime with the same pre-existing condition had simply gained 22 pounds in an eight-month period her diabetic condition would have been the same? A. Yes.

Q. Now, Doctor, I don't want to pin you to specifics again, but here also I think it is important that we have your professional guesstimate on this.

Of all these conditions that you think of as pre-existing diseases which can be aggravated or brought out through pregnancy that fall in the ten percent which includes both the disabling and the non-disabling, what percentage would these diseases occupy within that ten per cent, roughly? A. You mean the diseases and conversely asked that are not due to the contents of the uterus?

633 Q. Yes. A. I wish I could say, I wish I could give you an answer.

Let me start off and say –

Q. Here again I won't claim to hold you precisely to it. A. Well, ectopic pregnancy would account for one in 200. So that would be half a per cent there.

Placenta previs would account for two per cent nearly, so that would be.

Hydatidiform mole, carcinoma, we are talking about decimal points it is so rare.

So the remaining one, that one would think of would

of would be separation of the placenta, that is to say, an abruption of the placenta.

And there overwhelmingly it would occur in people who already had hypertension prior to pregnancy.

And I would give as a rough figure five per cent as due to the uterus, to the contents of the uterus, malimplantation, bleeding, that kind of thing, and five per cent to –

Q. To the other? A. – to the other.

634 Q. Yes. All right. A. But I hope that this does not get sent in and presented to my students lest they go back to the textbooks and say –

Q. It won't from me, I will assure you.

I am sure it won't be. I know what you mean by giving it that qualification.

So that by your process you divided about equally between the two categories? A. I would think so.

Q. Approximately.

Now, moving then to the five per cent that arises because of the presence of the fetus placenta, would it be fair to say that at least half of those do not produce a disability? A. Do not produce a disability for which hospitalization is necessary.

Q. All right. I am willing for you to add that. A. You would still to the overwhelming majority of these women say, "Stay home in bed."

Q. Yes.

Let's include your additional qualification. A. Yes.

Q. Would you agree that that at least a half of those

635 do not produce disability requiring hospitalization?

A. I would think so.

Q. So we might be down to two and a half per cent or less of the placenta and fetus-presented cause? A. Requiring hospitalization.

Q. Yes, sir.

Now, then, Doctor, going to another part of your testimony dealing with the typical period of time that women are advised to stay home out of work following delivery. I think you said that the standard medical routine is six weeks and that you as a specialist in the field considered that from a medical point of view maybe half that much time was required in the normal case? A. I tried to state that the reason for saying come back and see me in six weeks is a convenience rule for the physician because if after six weeks things are still not back in place he would tend to do something about it.

That would not at all mean that he is thereby predicting that things won't be back in place in two weeks. It is for his convenience so that he doesn't have to see people again and again and again until things are back in place.

It is much easier to say come back and see me in six weeks, and if by six weeks things are still not in order
636 then we will start talking turkey.

Q. Yes.

Now, if because of this prevalent view or standard mythology within the profession persists and it happens that working women are paid disability benefits for six weeks following delivery, you would agree that they are paid for a longer period of time than is medically required in the usual case, would you not? A. Oh, yes. I would say a flat rule that says six weeks of benefits must be paid postpartum is not based in the individual case on a medical requirement.

Q. Yes, sir.

Would you also agree if a physician universally prescribes the six weeks layoff to all of his patients those who are in the work force are paid the benefits longer than

medically required? A. That's right. Many of them are.

Q. Yes, sir. A. Yes, sir.

Q. You were asked several questions about the Caesarean operation and just in passing I would like to touch on one thing that seems to me to be important. I think you were asked – well, is the incision similar to an appen-
637 dectomy, and I think you said except for location it is. But when you compare Caesarean and a successful Caesarean with a successful appendectomy, isn't the great and important difference that in the appendectomy you remove a diseased organ or a malfunctioning organ whereas in the Caesarean operation you give birth to a living being? Wouldn't you say that is the big difference?
A. Well, yes and no. That is a very tough one. First of all, an awful lot of appendectomies are removed that are never diseased. So let's start with that.

Whenever we are in somebody's abdomen we remove the appendix whether they are diseased or not. Just simply so you –

Q. It is a useless organ? A. So you won't have to have a second operation later. You might as well get twice the goods for your money, I suppose.

The second thing that begs the question, which is when you say when you enter the uterus for a Caesarean section you are not doing it because of a disease.

Q. What is that? A. That is not factually true.
638 Q. You are doing it to deliver – you are doing it in order to be as certain as possible of delivering a living being, are you not? A. Yes, indeed, but that does not say that the uterus is not diseased, let me put it this way.

If a woman is in labor for 36 hours and goes into what we call disfunctional labor and is unable to produce a

normal-size fetus through a birth passage then the question becomes can you now say that you have a normal uterus.

Q. Yes, sir. A. You see, that gets us into that whole thing of when do you pronounce something diseased. All I can say is she is awfully disabled.

Q. Would you agree with my hpothesis that I have given as it may be applicable to the normal situation or to the typical situation comparing appendicitis operation with a Caesarean? A. Well, I don't know what your comparison is, that the appendix is diseased and the uterus is not? I would say statistically in the United States more appendices are removed while not diseased than Caesarean sections are done with the uterus normal.

THE COURT: Would you like to try for gallstones?

MR. BATTLE: I thought that would be an easy one
639 to answer, but apparently it isn't.

THE WITNESS: Do you understand what my problem is?

BY MR. BATTLE:

Q. Yes, sir, I do understand. A. We do a routine appendectomy. We do not do routine Caesarean sections.

Q. I understand.

Now, Doctor, you have in front of you the various exhibits in the form of those pink books, do you not?

A. Yes.

Q. Tables prepared by HEW, I believe.

And you were asked certain questions about Plaintiffs' Exhibit 97, which gave certain statistics on death rates of infants with respects to parents' income.

I don't seem to have a copy in front of me, but my memory tells me that table 17 was used on page 25.

A. That's right.

Q. Do you recall giving testimony about table 17 on page 25? A. Yes, indeed.

Q. Now, am I correct in interpreting that table to show with respect to birth and death colums applicable
640 to parents' income of less than 3,000, between 5,000 and over 5,000 would you agree with me that from the point of view of statistical information these figures are valueless in considering, one if one wanted to consider, death rates of infants born to women who work in industry where minimum annual salaries were in excess of $5,000. There is no column for that figure, is there, to compare upward? A. You mean five to six to seven to eight and so forth?

Q. Yes. A. No, it is not on this table, no.

Q. Now, in your entire practice, Doctor, have you ever experienced a case where death to the newborn resulted solely because the mother was not receiving disability benefits from her employer? A. Oh, that would be a question that would be totally impossible to answer.

Q. Well, do you recall any case? A. I beg your pardon.

Q. Do you recall any case where such occurred?

A. No one could.

Q. No one could? A. No one could, no.

641 You know, you would have to have a whole series of cases in which in one – one on day somebody's pay was cut off and the next day a dead baby dopped out. If things were that simple the old problem of illegal abortion would be solved. Women would forego their pay for three days and drop the baby out.

Q. Can you think of any case, and I am not being facetious, I think it is important, can you tell of any case or have you experienced any case where the mother suffered disabling complications during delivery or during pregnancy solely because she was not provided disability benefits by her employer? A. I couldn't begin to

answer that. That is why I said this morning I think in my testimony that these are data which are based on, you know, large-scale numbers. The simplest answer I could possibly give you is tht if the death rate, the infant death rate in this table is 22 per thousand live births with an income of less than 3,000, then quite obviously 978 per thousand did not have a dead baby.

Q. Obviously. A. So you know, at that point you cannot expect me as a physician to say that when somebody cut off the money the baby drops out dead. This is not the way it can be done.

642 Q. Now, just in passing, again you were asked certain questions about an opportunity to malinger during pregnancy as compared with an opportunity to malinger during other disorders, and you said that the complications of pregnancy could be observed, and I think you must have been referring to those complications that fall in the category of being related to the presence of the fetus or placenta? A. That's right. I said that the other complications, namely those that are akin to diseases in males, like diabetes and so forth and so on, fall into the same category. And what one sees that is peculiar to pregnancy is the uterine contents, and those are very close to the surface, readily accessible.

Q. What crossed my mind was this situation of a woman, say, during the seventh month of pregnancy coming to you as her attending physician and saying, "Doctor, I am suffering terrible backache, I just can't go to work," or, "I am awfully dizzy every morning and don't feel like working." There is no objective test that you can apply to that situation, is there? A. Oh, no. No more so than in a man.

Q. And it can be honest or it can be faked?
A. That is correct, yes, sir.

643 Q. Now, I was interested in one or two things that you said about contraception, and I think I will only deal with, for the sake of brevity, with the pill. And I

And I think before you gave your description of the use-failure rate of the pill, and its possible side effects, you said that there was no completely reliable method of contraception.

Now when you made that statement did you have in mind that for a method of contraception to be completely reliable, as you used the term, it had to reduce the chances of pregnancy to exactly zero? A. That is correct. That was the way I was using it this morning.

Q. Yes. I thought you were? A. Yes, sir.

Q. Well, now, don't you agree that statistics show that proper use of the pill, and I use it in its broad sense, reduces the chances of pregnancy to practically zero? A. Yes. I thought I gave the figure of one pregnancy per 100 exposure years this morning.

Q. You did give that, but I was mystified by that and didn't understand it. Maybe you can explain it.

You say one pregnancy in 100 exposure years.
A. Yes. It would mean –

644 Q. What do you mean by 100 exposure years? Does that assume constant intercourse? A. The way it could be calculated would be the following.

If you had 100 women, fertile –

Q. I beg your pardon? A. Fertile.

Q. Yes. A. Exposed to intercourse for one year, yes, exposed to intercourse for one year, one of them would become pregnant.

Q. Well, statistically, and I may be missing the point, that would seem to be far less than one percent as the term is usually used. A. Well, you see, you can't use one percent will become pregnant because it depends on

how many of them have intercourse, and that is why we use the term per 100 exposure years.

You could put it per one year of exposure, also, if you prefer to put it that way, just shift the decimal point. But the standard way of doing it in the contraceptive literature is to describe it per 100 years of exposure to intercourse.

645 Q. So that assumes 100 women having normal intercourse for a year? A. That is correct. And one becoming pregnant.

Q. And one would become pregnant? A. That's right.

Q. Now, would you agree that, excuse me, did you want to say someting? A. Yes.

Q. I think I am straight. A. You understand that that is – that that is as long as they are on the pill?

Q. Oh, yes. Yes, I understand. A. Okay. Because you know after –

Q. That is what I meant by proper use of the pill. A. Yes. But the different problems, which is in the United States, people don't stay on the pill for 100 years, obviously, you know. Half come off within three years.

Q. Yes. All right.

Now, you also gave some testimony on certain side effects, use of the pill? A. Yes, sir.

Q. The doctor who was on the stand yesterday for
646 the plaintiff had this to say, and I want to see if you agree with it, that statistically the use of the pill produced fewer complications than did pregnancies.

Would you agree with this, or am I being too general? A. No, I don't agree with it at all.

Q. You do not? A. No. I think that is a statement that is generally made.

Q. You do agree? A. I recognize the statement as universally made. The universal statement is use of the pill is safer than childbirth.

Q. Before you go into your explanation, which I will permit, I mean I will ask you the question so you can do it, but to stop right there, you do agree that among experts in the field there is this opinion? A. Yes. Depends on – now, you asked me to define the word "expert," and that becomes very difficult.

Q. I will withdraw that. A. Let me –

Q. Within the field of obstetrics the opinion prevails?
647 A. Yes, I think if you were going to go to a standard obstetrician he would say it is safer on the pill than to have childbirth.

Q. Oh, yes.

Now, you disagree? A. I disagree with it for the following reasons, which is that before you are allowed to go on the pill you have to have a physical examination. If you have cancer, liver disease, high blood pressure, heart disease, a whole slew of diseases, you are not allowed to play on the pill team, see?

Q. Yes. A. So you have to play on the non-pill team,

Q. Yes. A. So only well people play on the pill team. The sickies play on the other team. And then you wind up with statistics that show the wellies do better than the sickies.

Q. I see. A. But the answer is inbuilt into the way we put people on the pill. So while it is true that those who take the pill do better than those who have childbirth, the statement is true, it gives a false impression because we have pre-screened them and allowed only the healthy ones to play on the pill team.

Q. I see. A. So the statement is both true and meaningless, if I can put it that way.

Q. But you do agree that with all due regard for the validity of your opinion it represents something of a minority point of view within the profession? A. No, I don't think so.

I agree with the statement that those who are on the pill will have fewer deaths than those who have childbirth. All I am saying is that it is a meaningless question because we have screened them so that the healthy ones go on the pill and the sick ones do not go on the pill.

You know, it is like saying –

Q. Do you have a percentage figure of those who get screened out during this examination as being unable to take the pill for medical reasons? It is a very small percentage, isn't it? A. No, I don't think that there are any statistics that I know of except to say that with almost anything you can die from you are not allowed to go on the pill. And as a consequence they do infinitely better.

Q. And there are a lot of those same things which would indicate that the woman should not get pregnant either? A. Oh, that is correct. That is correct.

That is where the problem arises. Precisely.

MR. BATTLE: May I have just a moment?

THE COURT: Yes, sir.

Any further examination?

MR. BATTLE: Yes. Thank you, sir.

MS. WEYAND: Yes.

MR. BATTLE: I will be very brief.

THE COURT: Let Mr. Battle finish.

BY MR. BATTLE:

Q. Dr. Hellegers, among the group of women who should not take the pill for medical reasons that may

lead to dire consequences, I assume that that is a very small group percentage-wise? A. People that cannot go on the pill?

Q. Yes. A. Well, I don't know if the data to start off with – I do not have the fact that in the United States so-called halflife of the pill, and I will explain what I mean by the halflife of the pill is like two and a half years.

Q. I have a very simple question that has nothing to do with that, is that people that cannot take it or tolerate it for medical reasons fall into a small percentage. If you don't know the answer I can't insist. A. I can give the answer in a sense which is that 50 percent, which is why one talks about a halflife, 50 percent of American women who start on the pill come off it in a three-year period because for some reason or other they perceive they cannot tolerate it.

Now, I would not want to say that all of that is objectively and medically they cannot tolerate it, but the combination between objective and subjective intolerance makes for the fact that in the United States half the women who start on the pill come off it within three years.

Q. Do those who change their minds and want to plan a family play in the group that come off? A. No.

Q. Are you sure? A. I think so.

Q. Are you sure? A. Well, since I am under oath my perception is that they are not.

Q. But you are not sure? A. I am not absolutely sure, no. But it is, let me tell you why I think I am sure, which is that the average American family size is two children at the present time. Average fertility span is about 20 years at least. And you continue to produce halflives of three years by two pregnancies and you still

come off the pill. Do you follow me?

651 Q. Well, it doesn't matter. A. If you rotated half the Americans off every three years it would be extremely difficult to see that was in terms of planned pregnancies.

Q. Well, I am really concerned with those who fell in the category that you mentioned the first time as being those that it is dangerous for them to take?

A. Yes, you mean never starting into it?

Q. Yes. A. Where the doctor wouldn't even let them in?

Q. Yes. You mentioned an examination which would show? A. Yes.

Q. There are a group who should not ever start it?

A. No. I don't have the figure on that.

Q. But isn't it true that of that group, there are accepted methods of contraception that can be used by most of the people who fall within the group that cannot pass the examination to be? A. Overwhelmingly the next most acceptable would be the IUD in terms of effectiveness in birth preventing, and that would be, you would fall into a failure rate of two per 100 exposure years as failure rate on some IUD and up to seven.

652 Q. And then there are other acceptable methods?

A. Yes, diaphragms.

Q. Now, one further question, Doctor, and I will conclude.

Is it not true that in England and certain other European countries the practice of delivering by lay personnel and midwives is prevalent or much more prevalent than in the United States? A. Yes.

Now, I have difficulties with your describing midwives as lay people.

Q. I didn't mean to describe them as lay people. I said lay people and midwives. A. Yes. I don't know about layman. I would imagine delivery in Britain, Holland, and Western Europe by laymen is less than it is in the United States.

Q. How about midwives? A. By midwives much more common.

Q. Much more common? A. Yes, indeed.

Q. And the statistics of freedom from complications, death and so forth are just as favorable there as they are

653 here, are they not? A. Oh, yes. That is built into it. That is to say if any complications arises the midwives are forced to release the patient to a physician.

Q. Yes. A. That's right.

Q. And would she normally perform the delivery at home, the midwife? A. Well, less and less so.

Q. I am speaking now of Europe, Western Europe and England? A. Yes, less and less, though it is increasingly hospitalized, I think the last bastion of home delivery is my own place, I came from Holland, and that has changed from 70 percent home to 70 percent hospital in the past 15 years.

Q. When it was 70 percent home? A. Yes.

Q. The figures on complications and death and so forth compared favorably with comparable figures in this country, did they not? A. I would say their figures have always been better than in this country.

Q. That's right. A. In general that is correct.

654 Q. Thank you, sir.

That is all.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. WEYAND:

Q. Would you suggest why the figures were better than the United States during the period? A. Oh, yes, for a very simple reason. If you develop a complication at home in Holland they can get you to a hospital faster than, you know, in the United States.

As a matter of fact I used to live across the border in Belgium and deliver babies in Holland. And it took me less time, and my patient less time, to get from my home in Holland to the hospital in – my home in Belgium to the hospital and to the delivery room than it took me to get from the intern quarters to the delivery room at Johns Hopkins. I mean there is a hospital – there is a hospital every three miles and no city congestion.

But I wouldn't like to try it in Rotterdam or Central Rotterdam. That is where one no longer delivers at home. So it is a question of access to emergency facilities which are infinitely better in Europe than they are here.

655 Q. So the statistics and your experience, the medical experience shows that child labor and childbirth is not such a normal phenomena that a woman can go through it by herself unaided by medical assistance, is that correct?

A. Are you including midwives as medical assistance?

Q. Yes. A. Because I do.

Q. Yes. A. Yes, that is correct.

Q. Would you describe the type of training mid-wives have, what kind of medical assistance? A. Yes. It varies from country to country. In Holland it is a question of having, first of all, nursing degrees and then going to one of the Royal Schools of Midwifery and having two to three years further training which is –

that is more obstetrical training than 90 percent of the American medical profession.

I mean barring specialists, obstetricians and gynecologists. If you are delivered by a midwife in Holland you have much better an obstetrician than if you are delivered by a regular M.D., American surgeon.

Q. Are you acquainted with the roving hospitals in England that are available to the midwife on wheels when she is delivering? Have you been acquainted with that?

656 A. No. That is past my day. I left there in '52.

Q. I believe Dr. Donovan and the record in the Stromberg-Carlson case referred to the roving hospitals were available to midwives a few blocks away or right there when they were delivering if they were delivered at home instead of the hospital?

MR. BATTLE: I move that that testimony be stricken, Your Honor.

THE COURT: I think it was just gratuitous.

MS. WEYAND: He is going to be here, I understand, and I will ask. He is going to be their chief witness.

Certainly did not mean it to be testimony. We will waive it so being relied on unless it is put in in another fashion, of course.

MS. WEYAND:

Q. Would you describe the changes and effects on a woman's body of labor and childbirth which require medical assistance? A. Well, in itself labor does not require medical assistance. It requires medical presence in case something goes wrong. So that one can intervene.

657 For the rest there is really nothing that the doctor does in labor except hold hands and rub backs and encourage, you know.

In terms of delivery the main function is one to guide the head of the baby over the perineum or if necessary

do an episiotomy, which is sort of an American practice.

And then in general to prevent the baby from being expelled too fast is the major function. And that would be the normal function in childbirth.

Now, once again, there is a presence required for the possibility that certain things happen, such as rupturing of the membranes with the cord coming out and then the baby occluding the cord and the baby dying as a result of that. So overwhelmingly I would say that the medical presence is there as a preventer of complications rather than as a primary requirement without which the human race would die out. And quite obviously in Africa there is a population explosion and I am sure obstetricians are not there.

Q. Is a woman disabled throughout labor from performing any other type, any usual normal functions, housework or – A. Short of knitting, yes.

658 Q. The force of nature takes over and she is completely disabled? A. At some point in labor certainly.

Q. And through a substantial part of labor, dependent on – A. Yes. Oh, yes.

Q. Yes, she needs someone, must have someone with her to be safe? A. Yes, from the preventive point of view I think women ought to have obstetricians there from the beginning of pregnancy, but this is always a sort of preventive basis as picker-upper, and since that incidence of complication gets larger as one sits actually in the birth process that requires that medical aid be there all the time.

Q. To what extent in the United States are episiotomies performed in deliveries? A. Oh, in the United States it is, I would say, routine, or close to routine.

Q. So that it is routine for a woman to have a surgical incision and require stitches incident of childbirth?
A. In the United States.

Q. And that surgical incision in the United States is only made by medically licensed physicians, is that correct?

659 A. Yes, except for the few, except for the few nurse midwives that do exist in the United States.

Q. They are quite rare in the United States?
A. Very rare. Only some hospitals.

Q. And the type of stitches and surgery is the type of a medical incision that is used in other surgery, is that correct? A. Well, yes, it opens skin, bleeding occurs, and the wounds must be resutured. Of course it is in another location.

Q. Cuts through muscle tissue, the point of it is to cut through muscle tissue? A. Yes.

Q. And the muscle must be repaired so the muscle can function? A. Yes.

Q. And if a woman has either a tear or episiotomy without adequate repair she has a problem the rest of her life, does she not? May have? A. May have.

Q. Yes. What type of problem does she have if

660 there is not proper repair? A. Well, you know, the most severe form might be formation of a fissure which would be an opening or tract between the vagina and the perineum, and a lesser – a relaxation of perineum, possibly loss of sphincter control in the rectum, or worse – well, not worse but alternatively, uneven healing of the two edges of the wound so that one is constantly sitting on a knob with the pain and discomfort of constantly sitting on a knob.

Q. Could you say that the woman would be in a diseased condition if the repair was not made of an episiotomy or a tear of muscle during childbirth?

A. Well, it would be diagnosable and she would have complaints so she would feel ill, sick, discomfort or anything like that and a physician examining her would be able to find the cause of her discomfort. So to that extent it is a disease.

Q. Women feel sick and discomfort throughout labor and childbirth, do they not? A. Yes, indeed, they do.

Q. Uniformly? A. Again you asked me for 100 percent figures which I don't like. I have seen women deliver a baby that didn't know they were pregnant, so I don't like the 100 percent figure, but, yes.

661 Q. With rare exceptions? A. As a class, yes.

Q. Not what you would regard as sick during the period or point of view of being in discomfort, needing – attention during the time of labor and childbirth?
A. That's right.

Q. If a company requires a woman's physician to certify as soon as the woman is able to return to work because the company does not feel it should be obliged to pay sickness and accident benefits when she is not disabled, do you have any reason to think that physicians would not honestly comply with the certificate?
A. Oh, I would say one or two good lawsuits would straighten that out.

Q. What kind of lawsuits would the physician be subject to in your opinion? A. I presume for falsifying records or something of that order.

THE COURT: It would be a violation of the ethics of the profession, wouldn't it, Doctor?

THE WITNESS: Yes, Judge, but I have known people to behave unethically whereas a good lawsuit –

THE COURT: Doesn't the medical profession do something about it?

662 THE WITNESS: It might well do. I was simply suggesting I am more impressed by the force of the pocketbook than I am frequently by the force of ethics.

BY MS. WEYAND:

Q. Does the medical profession use policies of convenience in examining patients after a certain period to determine their recovery conditions in areas besides childbirth? A. You know, I have difficulty answering that because I haven't even been in a branch of medicine outside of obstetrics.

Q. They don't have rules of thumb on how soon you come back for work after an appendectomy? A. No, I would suppose the possible equivalent might be in the orthopedic and fracture area in which time periods are set that say something like you have to have this cast on eight weeks when it probably doesn't mean that after seven weeks it wouldn't be possible to have the cast off, but the standard practice would be to say eight weeks. And if by then it isn't healed we have got to do something.

Q. Are the tables which we dealt with respecting infant mortality and infant weight having to do with women and families earning more than $5,000 a year relevant when a woman loses her income by going on leave without pay? A. Well, these tables are family income, so it would depend completely on whether her husband had income or not, I presume.

Q. So if she would be dependent on her wages, or the family was, and she lost them then it would be relevant even though the wages when she was working might be over the amounts that Mr. Battle suggested?
A. I don't think I got the thrust of your question.

Q. He suggested to you that the tables were not relevant because they dealt with women – with families who had incomes lower than the ones that General

Electric employees have, and he suggested therefore they would not be relevant. I was going to suggest if the woman ceased having her income the fact that when she worked she had a $5,000 a year didn't mean that when she lost the income, the facts there shown, about the facts of immaturity and weight would not be applicable, these are relevant because she so happens – when she loses income the fact she had a $5,000 income before she lost it doesn't mean she would keep it from being relevant when she lost it? A. I think the three problems are mixed up.

664 One, is these tables go to $5,000. These tables do not show whether at 6,000, 7,000, and 8,000 the figures might still look better than at 5,000. That is number one.

There are no data on that in these tables.

The second thing is these tables deal with family income, so if women were to lose their income they might still not fall within the purview of these tables, depending on whether their fathers, their mothers, husbands, whatever provided the income.

If the sole source of income was what they got and they then fell within these particular tables then presumably they would be subject to this general risk.

Q. And the tables would be indicative of the effect of loss of income? A. Right.

Q. In respect to it? A. If they were to go from $7,000 to zero they would fall into the group of less than $3,000 in this table.

Q. And the experience in Holland showed this effect could have sudden – A. Well, I am sorry, in Holland the story was not an income story.

Q. It was –

A. People had their income but couldn't buy any food
665 with the income. That is why I was saying that probably income acts through nutrition.

Q. These were women who had had nutrition up until – A. That's right.

Q. Cutting off and immediately the cutting off of nutrition showed up immediately? A. That's right.

Q. In the infant mortality? A. And in infant weight.

Q. So it shows since you have had a $5,000 income for maybe five years of working with GE it doesn't mean that when you were cut off without pay that it didn't have an effect on the outcome in the child?

A. Particularly if it would affect nutrition is what I am trying to bring out in the story, not a deprivation of income. It was a deprivation of food regardless of income.

I am simply suggesting that income might act through food deprivation if there was no income and consequently not first-rate protein.

Q. You assumed that was one of the major elements reflected in the tables we referred to? A. Yes. I think I testified this morning that the two main things that would worry me is the quality of nutrition, particu-
666 larly protein, and secondly accessibility to medical care in the absence of income.

Q. Are there certain neurological and internal medical complaints which would be easier to malinger with respect to than pregnancy? A. I wouldn't say easier because, you see, everything that a man can malinger on a woman can malinger on except such things as prostatitis, testicular diseases, and organs specific to men.

By the same token women can only malinger differentially than man by that which is peculiar to women.

All I was trying to say is that malingering on the basis

of pregnancy as it affects the uterus and its contents is extremely easily picked up because you have access to the organ in that it is so superficial and you have access to find out if there is any bleeding. I don't quite know what it is one would malinger about, but that doesn't mean that a woman couldn't malinger as well on double vision as a man could.

Q. I believe that is all. A. All right.

THE COURT: Any recross?

MR. BATTLE: Very briefly.

667 RECROSS EXAMINATION

BY MR. BATTLE:

Q. Doctor, I want to ask you just one or two questions about this question of unethical conduct.

You don't mean to infer that if a doctor specializing in obstetrics invariably certified that his patients should stay out of work for six weeks after delivery that that doctor is engaging in any unethical conduct, do you? A. Oh, no. I am not suggesting that.

Q. I didn't think you were. A. I am not suggesting that at the present time, I would say that it would become unethical to do so if somebody else stood to lose by it. Then I think it would become unethical.

Q. But this opinion which you do not share, that you call a myth, prevails in the profession today, does it not, that it is better for the woman or customarily recommends that the woman stay out of work six months, in doing that they do not engage in any unethical conduct as a man? A. No. No.

Q. This is all. A. For one reason. I mean for one thing, I don't think you could ever engage in unethi-
668 cal conduct if you were – well, that is saying a little bit far – but it would not be unethical to give your best

medical opinion on a certain thing if that is what you were asked to do.

Q. Yes, sir.

Of course bear in mind my example relates to a doctor who today – A. Yes, sir.

Q. – in recognition of what you call the myth – A. Yes.

Q. – invariably prescribes, that is in all instances – A. Yes, sir.

Q. – that the patient stay out of work for at least six weeks? A. Mr. Battle –

Q. Nothing unethical about that, is there? A. I never met such a physician.

Q. I didn't think you did, but the record may have indicated a question that was asked you that you might have thought it was unethical and I wanted to straighten it out. A. Perhaps I gave an answer that isn't clearly understood.

669 It is my opinion that if a woman came in to a physician three weeks after childbirth and said if I can plead this case in court tomorrow, and I am a lawyer, I stand to get a fee of $50,000, and said to her obstetrician, "Do you think it is all right for me to go and plead the case in court tomorrow because I stand to get a $50,000 fee," I assure you that the vast majority of American obstetricians would say, "You go right ahead and plead that case, and I hope you win it." That does not at all mean that such a person might not have the six weeks as part of the mythology routine. And I was trying to say whether he would change his routine would depend on what the financial and pocketbook issues might become to him, the patient, and society as a whole. That is all.

MR. BATTLE: Thank you.

THE COURT: All right.

670

BRIEF RESUME

PAUL H. JACKSON

Born: Cleveland, Ohio, October 12, 1923.

Schools: Public Schools - Cleveland, Ohio (Chesterfield Elementary, Patrick Henry Jr. High, Glenville High, graduated 1941).

- University of Chicago, B.S. 1948, M.S. 1949 - Major in Mathematics
- Rennselaer Polytechnic Institute, Management Development 1962 (6 mos.)

Military Service: Drafted January, 1943, U.S. Army; served in European Theater as Staff Sergeant, Army Comm. Service (Signal Corps) November, 1943 - January, 1946. Honorable discharge January, 1946.

Employment History: Joined Aetna Life Insurance Co., June, 1949 as Actuarial Trainee. Fellow, Society of Actuaries (by exam) 1952. Appointed Assistant Actuary 1953, Associate Actuary 1957, Assistant Vice-President 1964. Responsible for all aspects of Group Paid-up and Permanent Life Insurance, Long Term Disability, Group Accident Plans, Large Amount Pool.

Joined The Wyatt Company in November, 1964. Client responsibilities include: General Motors Hourly-Rate and Salaried Employes Retirement Plans, both U.S. and Canada; IBM Retirement Plan; Penn Central Plan for Supplemental Pensions; IBEW Members' Pension Plan; National Electrical Contractors Association

Multi-Employer Pension Plan; Riggs National Bank; Landmark Communications. Special assignments - Report to House Armed Services Committee; Southern Railroad Study of Railroad Retirement System; Various Group Insurance Studies (National Dairy, Carlisle & Jacquelin, Landmark Communications, etc.); Civil Service Commission-Blue Cross Study; Dept. of Defense-Review of Industrial Pension System.

Family: Married to Martha Virginia Garrett of Des Moines, Iowa, June 24, 1949. Three children.

Residence: 8012 Greentree Road, Bethesda, Maryland.

Clubs: Hartford Golf Club, 1957-64; Congressional Country Club, 1967 to date; Cosmos Club, 1971 to date.

Actuarial Memberships: Fellow, Society of Actuaries; Fellow, Conference of Actuaries in Public Practice; Member, American Academy of Actuaries; Fellow, Canadian Institute of Actuaries; Member, International Congress of Actuaries (and ASTIN); Associate, Institute of Actuaries (Great Britain); Member, International Association of Consulting Actuaries.

Publications: See attached.

Personal References: Henry S. Beers, Chairman, North American Reassurance James A. Hamilton, Retired Chairman, The Wyatt Company Thomas A. Murphy, Vice Chairman, General Motors Corporation Preston Martin, Chairman, Federal Home Loan Bank Board Albert L. Williams, Chairman of the Finance Committee, IBM Joseph D. Keenan, International Secretary, IBEW

If there is no further examination help the Doctor down down, please.

You may be excused, sir. Thank you.

(The witness stood aside.)

THE COURT: Call your next witness, please.

MS. WEYAND: That completes the plaintiffs' presentation of the plaintiffs' case.

THE COURT: All right.

* * * * *

671 THE COURT: All right, gentlemen, plaintiff rested.

Any motions?

If not, please, call your first witness.

MR. KAMMHOLZ: I call Mr. Jackson, please.

PAUL H. JACKSON was called as a witness by and on behalf of the defendant and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Will you, please, state your name and residence address? A. Paul H. Jackson, 8012 Greentree Road, Bethesda, Maryland.

Q. And what is your profession, Mr. Jackson?

A. I am an actuary.

Q. What is an actuary? A. An actuary is a mathematician who makes use of statistical tables and probabilities relating to mortality and morbidity in the financial management of a risk enterprise such as a life insurance company or pension fund.

Q. Are you a Fellow in the Society of Actuaries?

672 A. Yes.

Q. What are the requirements for admission to the Society of Actuaries? A. There are a series of written examinations, ten in number at this point, required for membership.

Q. And when were you admitted to the Society?

A. 1952.

Q. With what firm are you persently associated?

A. The Wyatt Company.

Q. What is the nature of the Wyatt Company's business? A. Wyatt Company is a firm of employee benefit consultants and consulting actuaries.

Q. And where are its offices located? A. Well, I am employed in the Washington office at 1629 K Street, N.W.

Q. Does the company have other locations?

A. 14 or 15 other offices, yes, around the country in major cities.

New York, Chicago, Philadelphia, Dallas, Los Angeles, San Francisco and so on.

Q. All right.

Would you have the reporter mark this as Defendant's

673 Exhibit for Identification?

THE COURT: While the reporter is doing that, does anybody wish to cross-examine Mr. Jackson on his qualifications? If not, I declare him to be an expert in the field.

MR. KAMMHOLZ: Thank you, Your Honor.

We then offer in evidence – perhaps I should have the witness look at it.

Does the four-page document which I have handed you, Mr. Jackson, represent your curriculum vitae?

THE WITNESS: Yes, sir.

MR. KAMMHOLZ: Is it up to date and accurate?

THE WITNESS: Yes

MR. KAMMHOLZ: We then offer in evidence Defendant's Exhibit 52 for Identification.

THE COURT: All right.

If there is no objection it may be filed.

BY MR. KAMMHOLZ:

Q. In your professional capacity, Mr. Jackson, have you worked in the area of disability insurance coverage? A. Yes, I have.

Q. To what extent? A. In 1956 when I was employed at the Aetna Life Insurance Company, I was assigned the responsibility for developing the long-term disability insurance product which they were producing. And I was responsible for that until 1964 when I left to join the Wyatt Company.

Since then I have worked with disability coverages with
674 various clients and with some insurance companies.

Q. What elements are required for the satisfactory operation of an insurance program? A. Well, generally you need a defined event, a clear-cut hazard that is capricious in its impact beyond the control of the insured and one which involves a financial loss so that there would be an insurable interest.

Q. Will you give us an example, please? A. Life insurance is perhaps the best example.

Q. Does disability insurance also meet the requirements which you have enumerated for the satisfactory operation of a program? A. It meets them, but to a far lesser degree.

Q. And why is that so? A. Well, the death is a clear-cut event while disability is not so much a physical state of health but one which must be defined, such as restricted activity, or home or bed confinement, partial or total, permanent or temporary, and the like.

675 Q. So is it fair to say that disability commencement and termination are rather susceptible to exact and absolute determination? A. They are much vaguer in their certainty, the termination of most disabilities, the termination by recovery would be one of those vague areas.

Q. From the insurance point of view what problems, if any, are presented as a result of these considerations? A. Well, it means that the coverage is subject to claim abuse and malingering, which have been pointed out in actuary literature.

Q. What do you mean by claim abuse? A. Well, the application for disability benefits when the individual is not actually disabled, backache, feigned disability, mental illness, migraine headaches, various other contentions.

Q. You referred to malingering. Would you tell us more about it? A. Malingering is the term the insurers use to describe a situation where an individual continues in a disability and collecting benefits longer than would be justified by purely medical matters and requirements.

Q. Would this cover a longer claim in the first place
676 as well as at the end? A. In a situation such as pregnancy it could, yes.

Q. Do you have an opinion as to which of these two problems leads to the greatest abuse of disability income insurance? A. Both are extremely important. Malingering has been pointed out in the literature as being perhaps more important than the claim abuse, but it would depend on the period of time, I am sure.

Q. What, if any, effect, Mr. Jackson, have these problems had on the writing of individual disability income insurance? A. Well, disability insurance because of the vagueness of the definition of disability was origi-

nally instituted as an accident coverage. Sickness coverage was added, but the benefits are usually sharply limited, both in amount and duration. Waiting periods are used to exclude short-term sicknesses and the like.

Q. In your professional experience have you ever seen an individual, an individual policy covering pregnancy? A. I never have. Disability income, no.

Q. Are the problems to which you alluded, I will ask you now, have they had an effect on the writing of group disability income insurance? A. Yes. The
677 group insurers have had to concern themselves with the impact on benefit payments resulting from claim abuse, from malingering.

Q. For what periods of time do group policies covering sickness and accident, for what periods of time are they ordinarily written? A. Well, a group policy would typically be limited in benefit period to 13 weeks or 26 weeks with a few providing benefits for as long as 52 weeks.

Q. Percentage-wise do you know what current coverage in effect in this country breaks into in terms of 13 and 26 and 52? A. Roughly 45 percent of the plans provide 13 weeks of benefit, 50 percent 26 weeks and five percent would provide 52 weeks of coverage.

Q. Do such group policies ever include coverage for maternity? A. Yes, but the maternity coverage is usually expressed as a separate, a different form of benefit, sort of an add-on severance pay provision, separate and apart from the sickness and accident.

Q. Can you tell us approximately what percent of group contracts currently in effect to provide such add-on maternity benefits?

678 A. I have estimated that approximately 40 percent of of the existing short-term sickness and accident policies provide the maternity benefit.

Q. And when you refer to short-term sickness, sickness and accident benefit policies, are you referring to the 13, 26, 52 category – Yes.

Q. – that you described earlier? A. In distinction to the long-term disability policies which might pay for life or to age 65.

Q. Under the group disability insurance plan that includes maternity coverage, are maternity claims treated any differently than claims that are based on sickness? A. Yes. Almost always the benefit period has been limited to six weeks and it is customary to pay the full six-weeks benefit at the time of departure rather than applying a waiting period or even making sure that the individual is out as long as six weeks.

There are many situations where the benefit might be paid and as a result of an accident or miscarriage or something the woman might come back to work two or three weeks later and the full six-weeks benefit would have been
679 paid.

Q. And is it because of this method of payment that you earlier referred to this kind of maternity coverage as a form of severance pay? Yes. It is usually considered to be such and benefit design.

Q. On the basis of your professional experience, Mr. Jackson, would there be any difficulty in designing a disability income insurance plan which includes maternity benefits on the same basis as sickness or accident benefits? A. There would be a great deal of difficulty,

679 and certainly the existence of that coverage would have to be taken into account in designing the various controls that might be required to keep the benefit payments in line and to hold down claim abuse and malingering to a reasonable level.

Q. Let me return to the matter of control in a little bit; and let me first ask you, when did insurance companies begin to write disability insurance coverage in this country? A. Well, the first policies covering accident only benefits were issued in the 1870's and '80's. It was in the early 1900's when sickness was first included.

680 And the vast – the period of time in which there was the greatest activity was started around 1920, in the 1920's.

Q. And can you tell us about the experience of insurance companies since then on the subject of disability insurance coverage? A. Well, the insurance companies underwrote a great deal of coverage during the 1920's. It was quite a popular form. It appeared to meet a social need. It was easily sold.

In the 1930's with the Depression the financial experience was catastrophic. The insurance industry lost hundreds of millions of dollars on the coverage. Several companies were pushed into technical insolvency as a result of the bad experience with that coverage, and the major insurance companies withdrew from the commercial accident and health field for a number of years. They would not write, in other words, on any basis.

Q. What was the reason for the experience in the '30's that you have told us about? A. The chief reason for the bad experience in the 1930's was that the country was in a terrible depression and jobs were not available. And frequently an insurance policy was the only source of

potential income, so that those who were not yet dis-
681 abled would claim disability in an effort to obtain income, and those who were already disabled would not recover because they had no work to return to and would have otherwise lost their sole means of support.

Q. Are you saying that such coverage was abused? A. Very definitely, yes. It is a difficult coverage to control.

Q. Are there any disciplines or controls that can be imposed to cut down or eliminate abuses of disability income insurance? A. Well, on a group basis where the plan is employer sponsored, there are certain controls. For one thing, there are what I might call supervisor controls where individuals who abuse sickness and accident coverage and as a result have a work attendance record that is spotty may be passed up for promotion. They may receive merit pay increases that are smaller than they otherwise might be.

The employee might, in considering the furtherance of his career, usually wants to get back to work because he is competing with others.

There is a second type of control unrelated to the employer controls, namely the design of the coverage whereby the use of a waiting period which serves as a deduct-
682 ible, the use of a benefit, a limit on the benefit period which cuts off claims that perhaps should not be paid, but are already on the rolls and can't be cut off, are terminated.

Use of a limitation on the amount of benefits such as 60 per cent of pay or 65 per cent of pay so that the claimant while receiving benefit would have a financial incentive to return to full-time employment and get full pay for working.

Q. In the case of pregnancy coverage is supervisor control an effective discipline?

MS. WEYAND: I object unless there is a basis. I object unless there is a basis of experience laid for shoing that this has –

THE COURT: I think the objection may be well taken. You best lay a foundation, if you can, please, sir.

MR. KAMMHOLZ: Yes, sir.

BY MR. KAMMHOLZ:

Q. Mr. Jackson, what is the insurance industry's experience with regard to female employees returning to work after childbirth? A. Well, approximately half of the female employees who have children do not return to work.

683 MS. WEYAND: Excuse me, have what?

THE COURT: Half.

MS. WEYAND: Half.

THE WITNESS: Half.

BY MR. KAMMHOLZ:

Q. How does this figure compare with return rate to work for employees who recover from other disabilities? A. Well, the short-term disabilities, that are primarily the ones that are covered by the sickness and accident benefit, 100 per cent of those who recover return to work.

There are cases where recovery doesn't occur or where death takes place, but certainly the percentage would be of the total number going on disability who eventually return to the same job with the same company would be well up in the 90 per cent range.

Q. Now, with regard to the length of claims, are there any features unique to pregnancy claims that an actuary would consider as affecting cost? A. Well, in the first place the loss of income is going to occur at a date well off in the future so that final planning is possible.

Whereas with the typical sickness and accident claim the loss has occurred and the income has stopped before

684 the individual is aware of it.

This opens the possibility of claim abuse because there is a period of time in which the person can consider the various possibilities.

Secondly, the pregnancy claims, unlike most of the other sickness and accident claims, are not wholly beyond the control of the insured, which is one of the requirements for the successful operation of an insurance program.

There is also a difference in the duration of the claims. The median duration of a sickness and accident claim is two weeks whereas for a typical maternity absence about 13 weeks, or looked at from another standpoint, the end of a six-weeks period approximately 80 per cent of the sickness and accident claims have returned to work where only 10 percent of the maternity leaves would have returned.

So that it is a situation where you have a date of claim commencement that is off in the future, coupled with the fact that the average length of time is much greater.

Q. In the case of maternity, is there an incentive present to put off return to work which does not exist in other cases? A. Well, there is the baby, which is at home, the mother would presumably be interested in looking after its welfare, and frequently the infant in the first few weeks, certainly, after childbirth requires night feedings and the mother may be tired as a result of being up all night.

685

There are some clear-cut differences between that situation and the case of an individual who is sick and gets up out of his sick bed one day feeling good and then goes in to work.

685 Q. What effect, if any, does this child care consideration have on the limiting of benefits, of benefits control you mentioned? A. Well, generally speaking it would mean that the return to work is going to be delayed considerably.

The return may never take place, in fact. And the controls that the employer might have over the situation are thereby weakened. His control only operates as to his own employees.

A return to work to someone else would not enable him to apply any of these supervisory controls.

THE COURT: Excuse me, Mr. Kammholz, let me get something straight.

Mr. Jackson, is your testimony now based on actual findings, actual statistics? You speak of the staying home. Now, is that – is there an actuarial fact or is that just
686 your opinion as a man? And I happen to agree with it, I suspect it is a good incentive to stay home.

THE WITNESS: Well, that is my opinion both as a man and as an actuary.

I was asked to estimate – I was asked to appraise the general situation and to see whether there was something that might be different about that type of absence as opposed to other absences. There are some qualitative differences as well as quantitative differences which an actuary would have to take into account in attempting to set a level of premium as being supportive of benefits under a program of that sort.

THE COURT: Let me ask one more. You mentioned malingering. Do you have any actuarial figures on that, any statistics?

THE WITNESS: On malingering in connection with pregnancy?

THE COURT: Yes.

THE WITNESS: Claims?

There is very little actuarial experience by reason of the fact that the group business has been restricted, the maternity claims, to a six-weeks period and disability income coverage under individual policies is normally not paid when the absence is due to pregnancy.

687 Now, there are many statistics that give evidence to the general fact of malingering as it affects disability income insurance in particular as a specific form of coverage.

THE COURT: But not in reference to pregnancy?

THE WITNESS: No. As a general problem that has been found to be – to have an important bearing on the operation of disability income.

THE COURT: I would hate to think that expectant mothers were more dishonest than the average person.

THE WITNESS: I don't think malingering is really a case of dishonesty. It is asmatter of judgment as much as anything.

The pure and simple fact in the insurance business, actuaries merely record these things without drawing moral judgments on it, the existence of a benefit affects the basic statistics that you start with.

THE COURT: I know, but if you get something you are not entitled to, and you know you are not entitled to it, that is dishonest, isn't it?

THE WITNESS: If you were certain that you were not entitled to it.

THE COURT: All right.

688 Go ahead, Mr. Kammholz.

BY MR. KAMMHOLZ:

Q. In these answers, Mr. Jackson, you had, in child care, the child care aspect of a mother's absence after delivery. A. That is part of it. I think there is a

natural tendency on the part of mothers to want to remain in the home with the child as opposed to working. There is probably a similar problem prior to delivery that the mother wants to make certain that nothing goes wrong, and one way of making certain is to take it easy, so to speak. So that the problem really exists at both ends of the scale and unfortunately there are no professional yardsticks that you could draw on from a medical profession that say here is one that starts and here is one when it stops. It is a gray area and a matter of judgment.

Q. You have referred several times to the cost of adding maternity benefits to disability income protection plans.

Have you made any calculations of those costs? A. Yes.

And these costs that I developed were based on the average mix of plans in the country. The 45 per cent, 13-week plans and 50 per cent 26-week plans and so on.

689 The cost per unit of benefit for a female employee is approximately 170 per cent of the male employee cost where there are no maternity benefits provided.

Where the six-week maternity benefit is provided the female, the cost per unit of benefit for a female employee would run about 210 per cent of the male employee costs.

And where full maternity coverage, if full maternity coverage were provided, it is my estimate that the cost would run from 300 to 330 per cent of the male employee costs for a unit of benefit.

Q. I hand you now a copy of Defendant's Exhibit 42 and ask you whether you prepared these cost estimates? A. Yes. This is my estimate of the cost for extending maternity benefits to various programs countrywide.

Q. Would you explain, please, the general makeup of the exhibit? A. Well, first of all I estimated the cost

of adding such benefits to the short-term disability program, such as the one which General Electric has, and then as a secondary side effect the cost of requiring something of a similar nature under sick leave programs, and finally the problematical cost, the cost of disability claims

690 that may not really be true disability claims under the long-term disability plans and possible disability pension arrangements that would result from the provision of benefit for a good many of these cases to the end of the benefit period under one program when the second program would then pick up benefits.

Did you want me to describe the basis for the estimate or the numbers?

Q. Pages one and two set out the basis, do they not? A. Pages one and two set forth the sources of the figures. The estimates and the various statistics that were used, yes.

Q. And item – A. As well as the multiplication that was used to get the answers.

Q. The total estimated annual cost which you show at D on page two is $1,353,000,000? A. Yes.

Q. And is this predicated on plans currently in existence in this country? A. The present set of programs that we have, and the present benefit levels, yes.

Q. This figure does not include projections for additional

691 coverage? A. No. Nor does it make any allowance for for the possibility that the existence of benefit might actually lead to an increase in the birth rate. Essentially it is an estimate of the annual cost of the current time on the basis of the best available evidence.

Q. On the basis of your experience as an actuary do you have an opinion as to the consequences in the insurance industry if these added costs were required, period? A. Well, there are several. In private industry, obviously faced with added costs, there would be

cutbacks in other areas eventually to make up the difference so that there would be a diversion, perhaps, of funds that might have been channeled into other forms of benefit into this form of benefit.

From the standpoint of private insurers, if maternity benefits were in effect added onto sickness and accident programs with the requirement that they be treated under exactly the same rules then the controls, the deductibles, waiting periods, the benefit periods, benefit levels and so on would have to be reviewed.

Probably this would result, it would be my guess that it would result in a trend toward 13-week plans rather
692 than 26-week plans.

It would create certain other problems that have already been discussed in the literature that normally circulates among consultants, such as the problem of pre-existing – the pre-existing condition of pregnancy. It might lead to an increased use of pre-existing conditions exclusions under sickness and accident plans, or it might lead to the complete exclusion of employees from coverage during the first nine months of employment in order to avoid the situation where perhaps a woman who was pregnant applied for a job and secured it merely in order to obtain sickness and accident benefits at a known future date.

Q. Turning now to another area, a foreign area, does Wyatt Company have a foreign division? A. We have an International Benefit Consulting Department, yes.

Q. Are you also familiar with the document entitled "Social Security Programs Throughout the World, 1971," which I hold in my hand and which is in evidence here as Plaintiffs' 85. A. Yes.

Q. What is the fact as to the extent of maternity coverage under foreign programs as contrasted with sickness and accident programs generally?

693 A. Well, under foreign social security programs, I can't find my sheet at the moment, but as I recall my review of that material where maternity benefits are provided, with two exceptions, the countries of Nigeria and Lebanon, the maternity benefits are designed with different limits, different benefit amounts, and so on than would apply to the sickness and accident benefit. It would be customary, for example, to provide sickness benefits for a 26 or 52-week period whereas maternity benefits in the social security programs will probably be restricted to 12 weeks or 10 weeks or four weeks before and six weeks after delivery or eight weeks before and eight weeks after. They have been designed, the limitations on benefits have been designed, separately.

Q. And we are here talking only about social security programs of other governments? A. Yes.

In some cases the programs, the social security programs, are programs that require employers to provide benefits, but generally the programs are provided through the government's auspices.

MR. KAMMHOLZ: May I have a moment, Your Honor?

THE COURT: Yes.

MR. KAMMHOLZ: I have no further questions at this time.

694 THE COURT: Any cross-examination?

Thank you, sir.

CROSS EXAMINATION

BY MS. WEYAND:

Q. Are you aware that some companies are today writing sickness and accident policies that cover maternity leave disabilities from pregnancy? A. On a group basis?

Q. Yes, on a group basis. A. Yes.

Q. Do you know which companies are writing those today? A. Most of the major companies will now offer the coverage.

Q. For equally as great benefits for the same duration from a disability as arising from pregnancy? A. Yes.

Q. Are any companies not writing it as far as you know? A. There are a number of companies which are still studying the matter.

I think the insurance industry view of the matter is primarily one of accommodating a legal requirement and increasing premium income at the same time.

695 On a group basis it is not – it is not impossible to make an estimate, certainly an outside limit, that every female employee will have a baby and collect 26 weeks of benefit in a given year, so there is obviously an outside limitation, and insurance company premium rates can be set at a reasonable level for the coverage.

But I believe the companies that are offering the coverage are quite concerned about the controls that will be necessary. But whether they are claim investigations or other forms of control, I couldn't say.

Q. Do you have any actual knowledge of any company that has actually had any trouble with claim control under one of these policies? A. One of the policies that provides under the maternity benefits?

Q. On the same basis as provided for other disability? A. I don't think the experience is available as yet.

Q. So anything you would say is based on conjecture? A. No, it is based on the experience of the insurance

696 companies with the disability income coverage in general as being –

Q. But not on disability coverage related to absence for pregnancy? A. Disability income coverage generally.

Q. But not income – not an experience based on any insurance covering sickness and accident for absences from pregnancy? A. No, those results are not available.

Q. So there is nothing you have said except as based on analogies or opinion, is that correct, in any of your figures? A. They are based on the experience of the insurance industry in the 1930's and in the recession in Detroit in 1958 that indicate that disability income insurance is a tricky coverage to write on a profitable basis.

Q. There was no pregnancy equation involved in that experience at all, was there? A. No. That was without the pregnancy that it was a tricky coverage to write. It has become trickier, I guess.

Q. Now, in your figures, what age limit did you assign to childbearing?

697 A. I assigned no age limit.

Q. You assumed all women could have children when you made – gave these figures? A. No.

I assumed the birth rates, the age-specific birth rates for the general population would still have a birth rate of one per thousand at the central age 45 to 49.

Q. Did you consider the age of the women in the labor force when you made this calculation? A. Yes, I did.

Q. What age did you consider to be childbearing age for women? A. I applied the birth rates per thousand of population to the total female population to obtain annual births on an age-specific basis.

Q. Then you assumed – A. I then –

Q. Excuse me. A. Then ratioed at each one of the central ages with the number of annual births, ratioed the births down in proportion to the percentage of female workers, husband present, from labor statistics to female, husbands present, in the total population to obtain an estimated annual number of births among female workers

698 at each one of the seven age groups.

Q. Do you know what age group is childbearing in our society today? A. I don't believe I understand your question,, childbearing.

Q. By certain women of certain age bear children much less frequently than women of another age, is that not correct? A. That is true, yes, the birth rates per thousand are much higher in the 20's than they are in the 30's or 40's. They reach a peak, in fact, at the 20 to 24 age group.

Q. Do you know by age group what percentage of women of the various age groups are in the labor force today in the companies which you were making this calculation as to? A. I made the calculation on the basis of figures available from the Bureau of Labor Statistics for the total –

Q. Population? A. – working population.

Q. You don't know whether the companies that have – that you considered here, have primarily female employees or primarily male employees or primarily women over

699 30? A. Which companies that I considered? I took the entire population.

Q. I understand that your Exhibit 46 had to do – 42, had to do with the companies which today carry sickness and accident policies, is that correct? A. Yes.

Q. And do you know how many employees these companies have who are male and how many are female and

how many of the females are in the childbearing age? A. There are statistics, statistical sample is available in the Society of Actuaries experience figures which shows the exposure.

Q. But you don't happen to know? A. The exposure, the development here, was to develop the births among female workers and to take the simple statistics of 40 per cent coverage under sickness and accident plans and apply it to the births among female workers.

Q. Normally if you were going to figure the cost for a company you would figure the male-female mix, would you not? A. The male-female?

Q. Mix. You would also figure the age? Suppose you

700 were going to figure the cost for General Electric. You would look at what percentage, if you were going to add a coverage for disability arising from pregnancy, you would want to know what proportion male and female they had, would you not? A. I would want to know what proportion female they had.

Q. Well, you do it on a group basis, don't you? A. Yes, but our assumption would be the births that would arise from the female component.

Q. Yes, but when you are writing insurance policies you use the mix to determine the risk, don't you, and the larger the number of males the cheaper the policy would be for that group? A. It would be done that way, or more customarily would be to apply a separate rate assessment for each female worker and each male and add the individual rates up into one grand total and either divide by the number of employees or divide the total dollars by 12 and have the company pay that premium.

Q. Isn't it usual to spread the risk by taking as large a group with an many risks as possible? Why do you –

you are figuring risk per male and risk per female the way you are doing it and not averaging the risk on the two groups?

701 A. The risk is averaged on the two groups, but the risk is developed, the premium is estimated and developed separately because the total claims emerging on a group with a higher female content will be greater than the total claims emerging on a group of the same number of people and same benefit in force with a higher male content.

Q. Do you know the industries that today have sickness and accident policies in respect to whether they are industries that are predominantly male or predominantly female? Do you know which industries have sickness and accident policies? A. It is roughly a cross section of the total. I believe a percentage female in the insurance industry statistics is very close on the per cent of them in the work population as a whole.

Q. Are there sickness and accident policies in the textile industry? A. I don't work for an insurance company at this point and I don't have a client in the textile industry, so I am not familiar with that.

Q. Taking the American work force as a whole, do you know the three largest groups that have female in them according to census, the textiles, retail stores, teachers?

Now, those three groups are not included in sickness

702 and accident policies, are they?

Each group that – close to a million workers in them. A. Well, I was dealing with 90 million, 94 million workers of whom 32 million were female workers.

Q. Are the 90 million that have sickness and accident coverage? A. No. 40 per cent of them. 32 million workers have sickness and accident coverage under –

Q. Do you know if those 32 million that happen to have sickness and accident in industries that do not have

a large female component – A. I am not familiar with the industry components of that 32 million employee figure, but it would be available.

Q. You don't know the male-female component of the 32 million at all? A. No. But it is in the general order of magnitude of 30 to 40 per cent.

Q. Basing that only on the fact that is what occurs in labor as a whole, is that correct? A. No, that is based on the general percentages that the Health Insurance Institute makes available.

Q. The Health Insurance?

703 A. And it is also the typical sort of case when someone goes to develop cost figures for a so-called typical sickness and accident case, the usual assumption is 30 to 40 per cent female.

Q. If you go to a given company you look to see whether it is 10 per cent or 90 per cent, don't you?

A. This is right.

Q. Yes.

And the insurance figures have to do with hospital and medical expenses, do they not, on the group you were saying – what groups were you referring to? A. The Health Insurance Institute figures.

Q. And those are – deal with hospitalization and medical expenses, do they not? A. As well as disability income.

Q. But their hospital and sickness figures would be figures of groups larger than those that have merely sickness and accident, would they not? A. I don't believe that is true, no, I think they are –

Q. You think companies have sickness and accident, most of them have also hospital and medical, the two go together? A. I think a good many more companies have medical expense coverage than sickness and accident

704 coverage.

Q. Do you know how many more? A. By number?

Q. Percentage-wise? A. Well, an educated guess would be that perhaps 80 or 85 per cent of the employees would be covered under medical expense programs versus 40 per cent under sickness and accident plans.

Q. So you would have twice as many covered?

A. And it is not customary to provide sickness and accident coverage for larger salaried groups where it has been customary instead to have salary-continuation practices.

And in certain union contracts there are sick leave provisions which are aimed at the same general area as opposed to the insured sickness and accident program. This is the reason for the smaller coverage.

Q. The health coverage for hospital and medical expense quite uniformly covers wives of employees as well as employees, does it not, and dependents? A. I don't remember the statistics, but I believe that most plans provide for maternity benefits.

Q. They cover maternity benefits.

Now, the maternity benefits –

705 A. Well, they treat the hospital costs and doctor bills under the same program that provides for the hospital surgical benefits for other ailments.

Q. I believe you suggested that insurance did not normally want to cover events which are capricious events within the control of the insured? A. No. What I said was the insurance, the insurance program, is best aimed at capricious events which are not within the control of the insured.

Q. That is correct.

And you suggested that a sickness and accident benefit for pregnancy was not – was a capricious event – was not a capricious event within the control of the insured?

A. I would conclude that some of them certainly – that

that particular ailment can be distinguished, say, from the accident disabilities and some of the others, in the sense that it is not as capricious and more within the control of the insured.

I would not say it was 100 per cent within the control of the insured or that the others were not, but by and large it is on the one end of the scale where most of the others are on the other, towards the other end of the scale.

706 Q. Now, the hospital and doctor bills for maternity, for delivery, differs in no respect as far as an event within the control of the insured, does it, whether it is sickness and accident for pregnancy or whether it is hospital and medical expenses for pregnancy? A. You are talking now about the hospital surgical medical programs and not about the disability income?

Q. I said they are equally subject – A. Yes.

Q. – to the control of the insured. There is no difference whether the pregnancy is covered by hospital and medical expenses or whether it is covered by sickness and accident benefits as to whether it is a controlled event, is it? A. The benefits are sometimes different, though.

Q. But as far as the event being one which the insured may or may not have control over, there is absolutely no difference from an insurance point of view, is there, as to whether you are paying sickness and accident? A. That's right.

Q. Did you make any estimate as to what the cost would be for GE based on the fact that a – more than a majority of its workers, the age of its women – more than

707 half of them return to work? Did you base – did you work out figures based on GE's figures, and that some 40 per cent of its female employees are beyond the childbearing age? A. I made an estimate that the cost for the annual cost for GE currently for this sort of a –

Q. Based on figures, did you – A. Based on the GE birth rate and employment level and so on.

Q. And age? A. And benefit level.

Q. Did you go into the age of the women? A. I went into the actual rate of birth over the last three or four years.

Q. You did not consider the age of the women? A. Well, the rate of the births considers the age of the women, so indirectly it is in there.

Q. That has been going down, has it not, because the age is becoming older and the number of births is going down, did you consider that? A. If you take the – you are referring now to the last three-year period?

Q. Yes. A. The last three-years there has been a decline, yes.

708 Q. And that reflects a national – is consistent with the national decline in birth rate, is it not? A. No. I believe the national birth rate has declined to a minimum in 1968, rose again up to 71 and has declined again.

Q. GE has had – A. And the one thing that can be said for birth rates is that the future, whatever they are today, they will either go up or down. They will not stay the same. And these things run in long-term cycles and my estimates were based on the latest figures available.

Q. Now, your figures here are all based on assumptions as to the number of weeks at which they would be off, that would be the number of weeks which 20 weeks is what is the smallest amount, is that right, that you – A. No, 13 weeks.

Q. 13. That would be 13 weeks of sickness and accident benefits? A. Yes.

Q. You assumed all the women would be off that long, did you? A. I assumed 13 weeks of benefit, yes.

Q. You assumed 100 per cent of the women who were pregnant would be off 13 weeks?

709 A. Under 13-week plans, yes.

Q. You did not take into consideration the medical opinion that today women can work until they go into delivery and come back in six weeks? A. That may well be a medical fact, but it is a medical fact that is arrived at in the absence of income benefits. And the experience of the insurance industry, and of actuaries in particular, in assessing these statistics is that the presence of benefits changes the past facts, whatever statistics you have as to the average duration suddenly when you superimpose benefits on that, the facts change.

Q. Just a conjecture on your part women will stay off 13 weeks if they have benefits whereas if doctors will say they might go back in six weeks and let them work up they wouldn't if they have insurance, that is conjecture on your part, isn't it? A. It is an estimate, not a conjecture.

Q. You have no facts on which to base that? A. Yes, I have facts.

Q. What facts do you base that on? A. The experience of companies with disability income plans of this sort.

Q. None of them were as to pregnancy, were they?

710 A. As an actuary I have been asked to estimate the cost of an insurance program. Actuaries frequently are asked to estimate the cost of programs where there is no experience available.

Q. You are making an estimate where there is no experience available today in this regard? A. This is right. And that is a matter of actuarial judgment. And if you wish to refer to it as conjecture you may, but I would say this is my business, making estimates in an area where numbers are not available. If they were they wouldn't have to employ an actuary.

Q. Now, what basis did you make your assumptions on that women are going to stay off 13 weeks if they have benefits whereas the doctor says that they can work up until labor if companies let them and come back in three to four weeks? A. I have made an estimate of the benefit cost under these programs on the assumption that with a 13-week plan there will be essentially no salvage or minimal salvage after the program is underway. That typically the maternity case will collect benefits for 13 weeks. And that is included in the price.

Q. I assume that the program – you would have a claim form that the woman must have certified by her doctor that she is disabled, this would be a control that

711 would exist if it was parallel to that examination which is on other sickness and accident forms, would it not? A. Well, the controls that will exist under these plans, I am not sure have been fully designed.

I believe the insurance companies would continue that control that exist presently, that the individual must be under the care of a physician.

I would assume that the insurance carriers would want to continue that.

Q. If a company requires a woman's physician to certify that she is disabled just as a physician is required to certify for any other ailment, is there any reason to think physicians are going to give a dishonest answer there? A. No. But there is a different sort of situation in the typical sickness and accident plan when the individual must be under the care of a physician. The individual is typically in bed. Here we are dealing with a situation where over an extended period of time the individual goes from full capacity to disability that prevents employment at some point in time. I am not at all certain that that crossover point is really determined so much by the medical aspects as perhaps by legal and insurance provisions.

712 Essentially we are not talking about a pure physical state of health. We are talking about a state of disability that prevents an individual from performing the duties of an occupation. And that is somewhat different than just a state of physical health.

And the experience result that will develop under this will only be known when the programs have been operating for a while and the benefit payments have been fully recorded. And that experience can be examined and tested out.

Q. Do you know of any group of disabilities in which the physician sees their patients as often and as regularly as an obstetrician sees a pregnant woman? A. Most of the short-term sicknesses that these sickness and accident programs cover the individual will see a physician two or three times within a matter of days, and they are back at work.

Now, the visits to the obstetrician are on a much more deliberate basis, their frequency starts out rather long and as the date of expectancy approaches the frequency increases. So that they are two different things here.

Q. Have you in figuring your long-term disability cov-

713 erage taken into consideration the experience of the Social Security Administration which covers exactly the same group which you assumed would be covered? A. Social Security definition does not include maternity benefits for normal pregnancies.

Q. We have in the evidence here in the record a letter from the Social Security Administration that they do in long-term disability cover in any long-term disability any disability arising out of the pregnancy. A. A disability arising out of pregnancy, not a normal delivery.

Q. After six months. A. Are you talking about complications due to pregnancy?

Q. I think all of this, we are not talking about paying – are you talking about paying money to a woman who is not disabled by a childbirth? We are not talking about anybody going off because – A. Let's first be clear about what we mean by the word "disabled."

Q. Not able to work at her job is what I assume disabled – A. You also used the word "disabled," I think, to mean the medical state. And the word "disabled" also means any limitation in one's ability.

714 Q. I am using disabled in terms that she could not perform her job, and that is, I guess, the Social Security's understanding after six months? A. The Social Security definition is much tighter than the insurance definition and it requires a medically demonstrative condition.

Q. I think most, and is it not true, that most of the long-term disability coverage ties in with the Social Security as, I believe, the plan, the GE we have in that you have to file your claim with Social Security too, and the amount paid, I think this is true of all insurance policies, is it not, that on long-term disability you deduct what you receive from the Social Security? A. Well, you take it into account –

Q. You get a – A. – directly, or you may have a higher limit above which it is deducted.

You may deduct the primary benefit only rather than the family benefit. There are many ways of taking it into account.

But the long-term disability coverage is usually coordinated with Social Security.

Q. That is correct.

715 A. Whereas sickness and accident plans historically have ignored Social Security and have stopped benefit payment before Social Security commenced.

Q. In making your conjectures on C did you take – did you find out to what extent the long-term disability coverage experience of the Social Security Board was greater or less than your estimate here? A. I am assuming in item C that the claims that are involved there are a result of uncontrollable claim abuse, and I am assuming that Social Security might not pay at all. Now, if they don't –

Q. Don't your plans depend on Social Security paying in coordination, involved you pay – A. No, that is the reason for coordination, because the long-term disability plans typically have a more liberal definition of disability and they pay frequently in cases where Social Security does not pay.

Q. Do you know what Social Security's experience has been on the long-term disabilities arising out of disabilities caused by pregnancy? A. I don't believe that that figure has ever been sufficiently large for them to even record.

Q. That is correct.

That is correct.

716 It is so small. A. This is because, I think, well, the long-term disability plans in order to put themselves into a similar position have historically excluded pregnancy.

Q. But the Social Security long-term disability includes it, but the numbers have been so small that they don't statistically record them? A. The Social Security definition is not a total disability definition. It is a total and permanent definition. And I would assume that at any point in the course of a normal pregnancy that when a woman decides to stop work that she could not demonstrate to Social Security's satisfaction that her disability was going to prove to be permanent in nature.

Q. Did you assume that a woman was going to just stop work for these figures whenever she decided to before delivery? A. For what figures?

Q. In your computation you used in Defendant's 42.
A. I assumed that the average benefit payment would run 13 weeks under 13-week plans, 23 weeks under 26-week plans and 30 weeks under 52-week plans.

Q. You did not assume this on any actuarial calcula-
717 tions of the number of women who have actually worked until delivery on the ground that they were not disabled, no physician would honestly certify they were disabled, and that they would come back whenever they were certified by a doctor as able to come back? You took into consideration no such facts? A. As an actuary I might state that my experience with the medical profession and their control, their ability to limit the claims in the medical expense area is not one that would lead me to any great faith in their ability to control claims in this area.

I think that claim controls have to be built in in another manner.

THE COURT: Well, Mr. Jackson, there are figures, are there not, to show the average time that people are out on a 13-week plan?

THE WITNESS: Yes.

THE COURT: You didn't use those?

THE WITNESS: Well, the average time they are out on a 13-week plan, the median duration is two weeks or a week and six days or five days.

THE COURT: I want to know why you decided that on a 13-week plan they would be out 13 weeks?

718 THE WITNESS: Well, I started with the overall statistics that developed an average of 16 or 18 weeks at the present time, and then I allowed, as any good actuary would, for conservatism, the fact that when you superimpose benefits on here, when you remove the incentive to return to work as quickly as possible because no income is coming in, and instead you are paying 66-2/3

per cent, that there is some slippage involved at that point and the slippage then went from the 16 to 18-week area up to approximately the 23-week area, but obviously for 13-week plans you are not going to pay 23 weeks.

Now, the matter could perhaps have been refined a bit more and I could have assumed 12 weeks under 13-week plans because the situation that presents itself here is one of a distribution of duration. Some return earlier and then the peaking at some point where it is 16, 18, 20 weeks and then a tailing off to where some run on out to 40 or 50 weeks, perhaps.

And in any such curve when you move the benefit limit from 26 weeks to 13 weeks there would still be some claims terminating prior to that.

I did not take that into account in this estimate because the estimate is simply not that refined. It is based on a good deal of judgment in other areas as well.

719 BY MS. WEYAND:

Q. There is here an incentive to the woman to return if her income has been geared over a period of time to her wages and suddenly gets only 60 per cent. The lack of 40 per cent which she could get if she returned does act as an incentive to return, does it not? A. This is the benefit in design control that I had indicated earlier that applies to those who return to the work force. It is not quite a comparison of 100 per cent to 6o per cent, however, because our tax laws are such that the 60 per cent may largely be received free of income tax whereas the 100 per cent is subject to not only federal income tax but Social Security tax, payroll deductions for group insurance or other benefit purposes, and the expenses of going to work, transportation, work clothes and the like. Estimates of net take-home pay from 100 per cent of pay range from 70 to 80 per cent.

The 60 per cent benefit estimate of the net portion of that might be perhaps 55 per cent. So you are not – the comparison is not 60 versus 100 but perhaps 55 versus 70 or 80. And that gap narrows, of course, from time to time as the income tax rates rise.

But it is that incentive to return to workis one of the
720 fundamental things on which disability income coverage has been based and one of the things that permits it to operate in a satisfactory manner.

Q. Did you take into consideration that employers have in the past quite often, most employers, have required women to go off from work during pregnancy at six months or seven months, a given period which is now being changed because of the law requiring the employers to let employees work up until they go into labor if their doctor says they can? A. Well, I work with the average, the average duration on the basis of recent statistics where an arbitrary six-months or five-months cutoff was not involved, but individual consideration was.

Q. Where did you get the figures on which there was no arbitrary cutoff involved? A. Well, one place was the General Electric Exhibit 1 of the exhibits which they submitted indicating the numbers of weeks of absence prior to delivery on the part of maternity leave cases in 1970 and 1971.

Q. Did they tell you that they had a uniform policy in many of these plants, and the record here shows, that you are required to go off at six months? That in 1970 and '71 as to Salem where the plaintiffs come out of, did
721 they represent to you these were figures where the women were not required to go off? A. They didn't represent anything to me other than hand – as a matter of fact General Electric did not give me the number. I believe I was given it by Mr. Strauss as part of the general

statistical material that had been supplied in connection with the case.

Q. You used that figure as the figure indicating how long women would be off and assume they were free to work or not work there according to what – A. No, I did not use that figure. I made certain estimates on the basis of that figure and it didn't indicate that they were that far from the over-all results that I was assuming of 16 to 18 weeks.

Q. Where did you get your over-all results of 16 to 18 weeks from? Any other place based on experience than GE experience? A. No, that was just based on bits and pieces of information here and there of Public Health results and things of that sort.

Q. Those were all in past years before the policy was changed, were they not? Do you know what years employers began letting employees work as long as their doctor let them?

722 A. There are some employers who did that years ago, I assume.

Q. You assume. Do you know? A. Some have been forced into it recently.

Q. Do you know how many allowed them to work before? A. No.

Q. Where did you get your figure that the average amount paid on a benefit on a female – what was that figure – you based this on an average benefit to a female? A. $60 benefit under a 13 –

Q. $70 a week? A. $70 under a 26-week plan, and $80 –

Q. Where did you get the $70 from? A. The $70 figure was derived from the Society of Actuaries average figures.

Q. For females? A. Yes.

Q. What, sickness and accident policies? A. Yes.

Q. Is that figure a public figure? A. Public. The figure is included in the reports of the Society's Committee on Mortality and Morbidity.

723 Q. Is it $10 – what year for females? A. Well, I took the last exposure and divided it out and took the exposure period, the midpoint of the period, and ratioed up to get estimates, average benefit figures.

Q. Now, GE, I assume, is the one that led you to believe it is one of the higher paid during that 1970-'71 time, it did not average $10 for females at all. Are you sure that is a figure of the industry? A. The figure I was given from GE would indicate a $90 benefit.

Q. A week? A. Yes.

Q. Well, it is less than $10 a day in the figures that – their answers to interrogatories here – well, I just want to know, do you know what figures that $10 – $70 was based on? That is $10 a day for seven days? A. No. No, it is $70 weekly average. I think the average I was using worked out to 68 and I rounded it.

Q. That was based on all the companies of the United States that have sickness and accident policies, is that it? A. Based on a sampling of some four million employees

724 under the policies that the Society of Actuaries studied.

Q. Did that Society come out with the figure of $70, or you figured that on the basis of what was in there? A. I think the Society's tables, and developed the $70 figure.

Q. Developed the 70. Do you have those tables here to show me how you developed the $70. A. I have the tapes. I am not sure I have the development of the $70 figure.

Q. Could you develop it for me, how you got this $70 figure? A. Yes.

Q. Will you get the table out and tell me? A. You mean right now?

Q. How you got the $70 figure.

THE COURT: How much time do you think it will take?

THE WITNESS: I may never find the figure.

MS. WEYAND: That is what I thought.

THE COURT: I am going to be extremely generous, but not that generous.

I was going to ask, do you think it would be easier for

725 you if we took a brief recess and you got this in conference by yourself?

THE WITNESS: Well, I would have to get out – I would have to get out my worksheets that were involved in this, and one of the items that I had, which is the Health Insurance Institute survey which unfortunately I don't have with me today. This is why I say I may just reach a point where I would have to say I believe that a 60, 70, and $80 average benefit are realistic as we sit here on July 1, or as of, let's say, July 1, 1973.

And it was not my intention in developing these figures to overstate that item or to understate it, but merely to estimate it.

THE COURT: All right.

If you insist on the question I will permit you to permit him to remain.

I will give Mr. Jackson some time to determine whether he can get it.

MS. WEYAND: I insist on it. I think it is important.

THE COURT: Do you have further examination, ma'am, of the witness?

MS. WEYAND: I don't believe I do.

726 THE COURT: You do not at this time?

MS. WEYAND: Do not at this time.

THE COURT: Any redirect?

MR. KAMMHOLZ: May I have a moment, Your Honor?

THE COURT: Yes.

Don't worry about it now. I will ask you to report to us tomorrow.

Anything further?

MR. KAMMHOLZ: Two questions.

THE COURT: All right, sir.

I hope you can do it. I have never known a lawyer that could really ask just two questions.

MR. KAMMHOLZ: Now I am under the gun.

THE COURT: Go ahead. I won't hold you to it.

REDIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Mr. Jackson, you advise, among others, the International Brotherhood of Electrical Workers members' pension plan, do you not? A. Yes. Well, we advise the Brotherhood of Electrical Workers on their members' pension plan that are staff planned and the plan covering officers, representatives and assistants.

727 And the plan in the electrical contracting industry covering some 200,000 workers where the negotiations are with the National Electrical Contractors Association.

Q. Are the answers that you gave here this afternoon and the assumptions that you have described the same that you would have given in response to inquiry from the IBEW pension plan or Aetna Insurance Company, for example? A. Yes, they are. As I say, this is a cost estimate of what is available country-wide and what the impact is country-wide. And it is subject to a good many areas involving judgement. One of the items, for example, is that I applied a judgment factor of ten per cent discount on the average birth rate to allow for the fact that

working wives probably have a lower birth rate than non-working wives.

Now, this means that wives who are not working I have assigned a 20 per cent higher birth rate than working wives.

It was an estimate, that judgment factor.

The matter of whether or not actual statistics are available that prove these things, it has been my experience

728 that the most difficult actuarial work is that which has to be conducted in the absence of such figures.

One illustration would be the situation where the auto companies may negotiate for an early retirement benefit and we have to assume or make a conjecture with greater benefits being available that more people will retire and the cost has to be based on that.

And the cost is in effect based on a matter of judgment.

And I have done my best to set forth here a figure for, in effect, a client; that I would hand to any other client if they were to ask me for it.

MR. KAMMHOLZ: I have no further questions.

THE COURT: All right.

Any recross?

RECROSS EXAMINATION

BY MS. WEYAND:

Q. Did you assume in these figures that more women would have babies if they had sickness and accident for disabilities arising from pregnancy? A. No.

Q. You did not? You based it on the – what did you do, an average of the last three years at GE?

729 A. No. You mean this figure? This was based on the age-specific birth rates for the general population.

Q. In the year 1968? A. Yes.

Q. You made no assumption that the woman would work up until she was actually disabled, did you?

A. No.

I rather went at it from the other end and assumed an average benefit period for the purpose of determining an average.

Q. That had no reference to any facts you had about the period a woman was actually disabled from work because of pregnancy? A. Well, it relates to the facts that are normally available on the subject, but it started out at a 16 to 18-week average duration from the date that employment stopped until the date the individual returned to full-time work.

Q. But you have no figures, no data that would show you whether it is 16 to 18 weeks represented a period that she claims she was unable to work and that it was not affected by the employer requiring her to go off when she was able to work. You don't know which that figure represents. You have no basis for thinking the 16 to 18 weeks represented a period that she was actually

730 medically disabled to work, that the doctors would certify she was unable to work? A. In essence what I have assumed is that with the benefit plans we have here that these will be the approximate amounts of claim costs under those plans, and if under those plans in order to obtain a benefit an individual needs a physician's statement then that assumption is inherent in my figures.

Q. The 16 to 18 weeks, did you know whether that represented any physician's certification that she was disabled for the 16 to 18 weeks? A. No.

Q. But under the plan she would only get paid for the period she was – had a certificate from the company that she was disabled, from the physician, that she was disabled and – wouldn't she? A. Well, you have more faith, perhaps, in the fact that these plans are going to operate the way they are supposed to than I do. As an

actuary I am a little suspicious, and perhaps would be inclined to assume that if she has been out for 16 to 18 weeks that in the future if 50 per cent of pay is paid to her during that period she will be out 16 to 18 weeks plus a few more.

731 Q. If the facts were that she was required to go off by the employer at the end of six months and not allowed to come back until two months after pregnancy, which required – A. That wouldn't work out to 16 to 18 weeks.

Q. If she was required, sometimes go off at six – A. You are up to 20-some odd weeks already.

Q. If that enters into any of these figures of the employer requiring her to go off, you do not have a period of 13 or 16 or 18 that represents any experience based on doctors certifying disability, do you? A. No.

But let me address myself to that point very briefly.

In the past employers have not used arbitrary rules because they felt that they just want to get rid of people at the earliest possible date.

Q. How do you know that? A. Because I have been associated with employers who have had sick leave programs and maternity leave. I might add that my own personal experience extends back over some 20-odd years in the field and I have had perhaps a dozen secretaries have babies and leave and I can't help but look at the situation and draw some conclusion of my own. The six-

732 month point or the seven-month point I do not believe was selected by companies just to be nasty. It had a purpose. The purpose was to prevent people from hurting themselves at work and having the company be responsible. That being –

Q. Do you know whether anybody ever hurt themselves at work? May I finish my thought?

That being the case, I can't see how a company can defend itself if a doctor comes in and certifies that the same point in time that he wishes his patient to stop working so that she won't hurt herself the company has almost put itself in the position of where its own rule is now forcing it into a certain area of action. So I would be very much surprised if as a result of adding maternity benefits to these sickness and accident plans that the combination of these requirements of not allowing companies to force people out at one point, but rather paying the people benefits while they are out, it is my judgment that that is not going to result in any shortening of the period of absence.

Q. Do you know of any study which shows that a woman ever hurt herself in the plant because she was pregnant? A. No actuarial study.

733 Q. Do you know of any other kind of a study that ever showed that? A. Well, I am familiar primarily with actuarial studies.

Q. You know of no study of any kind that showed that? A. Well, there are probably figures available in the Workmen's Compensation area that must have some bearing on the matter, but I am not familiar with them.

Q. Don't know whether there are or not? A. No.

Q. No other questions.

THE COURT: All right.

Any reredirect?

MR. KAMMHOLZ: No rere, Your Honor.

THE COURT: Help the witness down.

(The witness stood aside.)

THE COURT: Mr. Jackson, I will ask you to – I believe you said your home was in Maryland; I gather you are not going to stay – are you going to be overnight?

THE WITNESS: No, I wasn't planning to, Your Honor.

THE COURT: I will ask you to do this. I will ask

734 you to come back if you decide that you can answer Miss Weyand's questions. If not, just call one of counsel and tell them that it will take you forever to do it and I will excuse you. You will not have to come back.

Thank you.

May I make inquiry? How many more witnesses do you anticipate presenting?

MR. KAMMHOLZ: Your Honor, we have one very short witness and a second very short witness. One somewhat longer witness.

My quesstimate is Mr. Hilbert on direct examination would not be over an hour.

THE COURT: You want to finish today then?

MR. KAMMHOLZ: I am not sure our missing witness has arrived.

We certainly can finish –

THE COURT: We are going to work a little longer.

MR. KAMMHOLZ: – in good time.

THE COURT: We will do the best we can. No more half days around here.

All right, we will take a brief recess.

(A recess was taken at 4:43 to reconvene at 4:55.)

735 THE COURT: Call your next witness.

MR. BATTLE: May I have just one minute, please?

THE COURT: All right.

MR. KAMMHOLZ: Your Honor, during the recess Mr. Jackson had done some further calculating and it might be appropriate to call him back.

THE COURT: He can answer then?

All right, he may come back then.

(The witness resumed the stand.)

THE COURT: I think Mr. Jackson is going to tell us where he came up with the $70.

THE WITNESS: Yes.

I found my worksheet, Your Honor, and I have a reference on that worksheet. Most of the items on the worksheet such as the 40 perccent, 50 per cent and 60 per cent have been listed in my – in the 13, 23, and 30-week utilization, the 60, 70, and $80 benefit amount has been listed in my brief typewritten estimate.

I have a notation on top of this that indicates that the source is page five of the Health Insurance Institute reference which is the 12th annual survey, 1971, Health Insurance Institute, relating to new policies, new group insurance policies installed in 1971.

736 I also have a note that the 1971 reports were used. At this point I recall that I used the 1971 reports primarily to get the distribution between plans to adjust the distribution among the new plans by length of benefit period to something more closely approximating the actual in force at the present time because the Society of Actuaries reports I treated as a statistical sampling of some 20 or 30,000 policies, whatever the amount happens to be.

The 60, $70 and $80 averages were based on the figures on page five of the Health Institute survey which gave the average figures for new plans being issued in 1971. Those were rounded. I think, as I recall, the figures were $57, they ended in a strange amounts that would have, I am sure, looked more impressive, but since this is an estimate I rounded the numbers off to $10 amounts.

Now, the numbers are the average benefits under the plans in 1971, essentially under the new plans.

The new plans generally have a lower average benefit than many of the existing plans because it is the more

737 affluent employers who have had plans the longest

time, and many of these new plans are being written to groups of lesser resources.

I did make the assumption, however, that that is an error on one side that the figure is too low and the figure is too high on the other side if it should be demonstrated that the average benefits were lower than the average benefit. However, I might observe that these weekly sickness and accident programs rarely cover top executives. Frequently they don't even cover the salaried staff who are often under another set of working conditions entirely, and certainly for the purpose of the future I could only say that the 60, 70, and $80 figure were my best estimate, and that is the source of them.

BY MS. WEYAND:

Q. That is the maximum average of the maximum payable, is that correct? A. No. That is the average benefit provided.

Q. Maximum benefit? A. No. The average.

Q. In a plan how do you know the average benefit? A. We feel you have the total amount of coverage and divide by the people. You can determine an average amount of life insurance by adding up the numbers of thousands and by dividing by the number of employees.

738 The maximum may be 100,000. The average may be 10.

Q. These new plans, you have had no experience under the new plans. You are telling us what could be paid, not what was paid? A. No. We are saying what the average benefit in force.

Q. How do you figure what is the benefit in force? A. Well, let me give you an illustration. If a plan is issued and there are 100 people covered and 50 of them have weekly benefit amounts of $40 and 50 of them have a weekly benefit amount of $60 the average benefit in

force would be $50.

Q. These are plans? A. The maximum under the plan might be 100, but there may be nobody getting that.

Q. These are not plans that are geared to 60 per cent of your salary or something like that? A. These plans, it is the percentage of pay is usually provided under long-term disability plans. These plans are usually written on a scheduled basis where a dollar amount is provided. The dollar amount is usually provided to an individual earning between so many cents an hour and

739 so many cents an hour. There is a specified amount.

Q. Do you know how many are written for a percentage, like the GE plan is written for 60 per cent of your weekly salary with 150 maximum, the General Motors is written for 60 per cent, the Chrysler is written for 60 per cent, and you get the reflection then that the women have lower pay on the 60 per cent which again, you find out that because their weekly rate is lower, the 60 per cent results in a much lower benefit for the female?

A. General Motors program I do not believe is based on a percentage. I believe it is based on a classification and a schedule. And the schedule is negotiated.

Q. I have the contract here. But there is – the GE is certainly 60 per cent. A. I would say that is unusual. I would say whether they are scheduled or not the only primary difference is that on the schedule basis there is a top limit in the schedule, and as inflation takes place and people's pay goes up you have to in effect amend the plan to give somebody something extra.

740 My impression of a flat percentage plan is that the percentage is a constant thing and as pay goes up the benefit automatically follows.

Q. That is correct. A. Well, the General Motors plan, the benefit does not automatically follow. It is negotiated.

Q. Maximum under all of them? A. Right. That is customary.

Q. That there is a maximum on the General Motors too? A. I don't know that there is no maximum on it.

Q. Does there – is there a maximum on GE? There is a maximum on General Motors. The companies I have been dealing with there are maximums, and they are big companies. A. Well, they are scheduled.

Q. On the schedule there are different amounts per type of wage, are they? A. The schedule of benefits is –

Q. Graduated by – A. – graduated on the basis of the individual's rate of hourly rate of pay. Usually it is exclusive of overtime.

Q. Then you took an average of the amount of the

741 ones that are scheduled? A. Of the amount in effect of insurance, amounts issued under the new plans as described in that report of the Health Insurance Institute.

Q. Did you know when you figured the amount how many employees were at each level male and female of the scheduled benefits? A. No.

Q. You took an average without a female breakdown? A. That's right.

Q. Okay. Thank you very much.

THE COURT: All right.

Any further examination?

MR. KAMMHOLZ: No further questions, Your Honor.

THE COURT: Thank you.

You may be excused, sir.

Thank you very much.

(The witness stood aside.)

THE COURT: All right, gentlemen, call your next

witness, please.

MR. KAMMHOLZ: Harvey Helman.

HARVEY HELMAN was called as a witness by and on
742 behalf of the defendant and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Will you give us your name and address, please? A. Harvey Helman, 9 Alder Court, Matawan, New Jersey.

Q. By whom are you employed? A. The General Electric Company.

Q. How long have you been a GE employee? A. Over 17 years.

Q. And what is your present position with GE A. Consultant in personnel practices working at the corporate headquarters in New York City.

Q. And how long have you held that position? A. For about four and a half years now.

Q. Mr. Helman, do you have in the file before you the turnover data at specific GE plants for 1972? A. Yes.

Q. Which has been identified here at GE Exhibit 41-A and 41-B? A. Yes. I believe it is the same.

Q. Was this prepared under your direct supervision?
743 A. Yes.

Q. When? A. In the spring of 1973.

Q. Directing your attention first to GE Exhibit 41-A, why were the seven plants selected that appear on the first page of that exhibit? A. We selected these seven plants because they had basically the largest female population in the – or at least percentage-wise represented large female population.

Q. Would you tell us what the first page is intended to show? A. The first page represents a compilation of the employment and termination data for the year

1972 of the seven plants, the actual raw data.

Q. And what does the second page of that exhibit show? A. The second page includes data from a previous study of four other locations and combines the total of the seven locations.

Oh, I am sorry, I got my exhibit – I think that is in different order than yours, I am sorry.

Q. Would you look at mine, please? A. Yes. Okay.
744 All right.

The second page gives a calculation.

Q. Excuse me.

Would you, please, arrange your pages? A. Oh, do you want yours back? I am sorry.

Q. So I may have mine back.

THE COURT: This is 41-A now?

MR. KAMMHOLZ: 41-A, Your Honor, yes.

THE COURT: Mr. Helman's pages don't seem to be as big as my pages.

Now, you are sure we are looking at the same thing?

THE WITNESS: The mechanical marvels of industry, yes.

I have it now.

BY MR. KAMMHOLZ:

Q. Turning now to page two, it reflects percentages and are these predicated on the numbers appearing on page one? A. Yes, they are based on the data we presented on one, yes.

Q. The next to the farthest column from the right-hand side shows a weighted average.

Will you, please, explain what that weighted average
745 represents? A. Weighted average is the proportional weight to the size of the sample so that a component like Louisville, which was very large, would get its

proportionally large representation in the percentages.

Q. In the last column showing arithmetic average?
A. The arithmetic average just divided the percentages of each of them by seven, not giving proportional representation to the larger locations.

Q. Turning for a moment now to the first page of 41-B. A. Is this it?

Q. Does that show comparable data from four other locations? A. Yes.

Q. How did you happen to select those four locations?
A. Those four locations were selected earlier in 1972 prior to the first trial date in May.

Q. In '72 or '73? A. In '73. Prior to the first trial date. They were selected at random and in an ex-
746 pedient way to get the data quickly because we didn't have much time to get it. The only provision we made was that we get it fast and that they be locations that were represented by the IUE.

Q. And were the figures on the first and the second pages of 41-B compiled on the same basis as the figures in 41-A which you have already testified about?
A. Yes.

Q. What was your reason for including the four-plant study with the seven-plant study? A. Well, they were two independent studies. One was run independent of the other. And so we thought it would be useful looking at the two separate numbers to see how well they compared.

Q. Let's return now to 41-A and calling your attention to the third page, the last page, I am sorry, the fourth page of 41-A – A. Yes.

Q. –will you explain, please, the numbers that appear there? A. This is a presentation of the data from the two separate studies, the seven locations and

the four locations giving both the arithmetic and weighted average for both and then combining both studies and
747 giving the arithmetic and weighted averages for both studies.

Q. I do not believe that you have – that I have interrogated you about the difference between the quit and the termination figures. What is that data?
A. The termination figures include all people who during the year 1972 broke service with the company. That means left for any reason whatsoever. Quit voluntarily, with discharge, retired, died, anything that would have broken their service with the company.

Q. And what does the quit figure represent?
A. Quit limits the termination to those people who voluntarily left the company and broke service during the year '72.
THE COURT: In other words, the quits are included in the termination?
THE WITNESS: Yes.
THE COURT: While I have interrupted you, let me finish on that. On the last page of 41-A, left-hand column, you have 18 per cent, 12 per cent. Do you see that?
THE WITNESS: Yes. Yes, the term female was left off.
THE COURT: I take it you have them in there?
748 THE WITNESS: Yes. I am sorry.
THE COURT: If there is no objection I will write them in in case I am looking at this. I think I would be able to figure it out.
MR. KAMMHOLZ: Thank You, Your Honor.
THE COURT: I am sorry. Go ahead.
BY MR. KAMMHOLZ:

Q. And again on the last page to which the Judge has just referred, the arithmatic and weighted averages

are compiled on the same basis as you have heretofore testified? A. Yes.

Q. On the separate numbers? A. Yes.

MR. KAMMHOLZ: I have no further questions.

THE COURT: All right. Any cross-examination?

CROSS-EXAMINATION

BY MS. WEYAND:

Q. This is for which one of the Fort Wayne–

A. Just a special transformer department.

Q. Doesn't use the whole Fort Wayne plant?

A. That's right.

749 Q. How did you happen to pick the special transformer division at Fort Wayne? A. Because that is the only one that I could get the data that we requested in the time frame that we requested it.

Q. Where did you request it? A. I called the Employer Relations Manager at each of the locations and asked if they could give us the data in this period of time.

Q. When did you call them, the man at Fort Wayne?

A. Which one, the man from the transformer? I don't recall the exact date, it was back in April, I believe.

Q. Of '73? A. Yes.

Q. And what figures was it that he had these available? Did you call the other plants at Fort Wayne to see if they had the figures available? A. Yes.

Q. They told you they didn't have the figures?

A. Well, they couldn't put it together in the form I wanted this data.

Q. What they couldn't put together was what?

750 A. They couldn't give me the termination and quit data that I had requested in the form I had requested it.

Q. You called each of the other four or five plants

at Fort Wayne? A. No. I just called the Employer Relations Manager for the Fort Wayne operation.

Q. And the only one he claimed to have available was Specialties Division? A. No. I called Specialties separately because they operate pretty independently of the remainder of the Fort Wayne operation. They do their own employment pretty much.

Q. In April of '73 the manager of the other – of the other plants at Fort Wayne claimed not to have this information, is that true? A. He said he could not put it together in the time that I requested it and it would require a lot of, you know, effort and so on, and said that if we could get it elsewhere he would prefer it.

Q. You asked him for just the figures that are on here, is that what you asked him for? A. No. I asked him for this information and for additional information.

751 Q. He didn't tell you he couldn't tell you the total number of people employed in each of the plants or the number of males and females or quit or hired, did he? A. No. He couldn't give me the quit data and the termination data that I requested under the definition that I requested.

Q. What was your definition? A. We wanted only those who broke service for terminations and we wanted only quits with those who voluntarily quit and broke service during this period.

Q. And you are not using the hires on any of this turnover data. You are looking only at terminations?

A. The information presented here is only terminations, yes.

Q. What date is the total taken and what date is the – this is of what? A. This is average employ-

ment for the year 1972

Q. And average quits? A. No. The continuation would be the average quits. It would be the total quits during the year '72 and the total terminations during the year '72.

THE COURT: Let me see if I understand. What do you mean by average employment?

THE WITNESS: That the employment for the 12 months
752 and average it by 12 so that at one point it might be 1,000 and then at the end of the year it might be 2,000, but you have an average employment of 1,500.

THE COURT: So on 41-B where it says Fort Wayne, does that mean at any one time you had an average of 1,642?

THE WITNESS: During the course of 1972, yes, the average employment was 1,642.

BY MS. WEYAND:

Q. You took what, the end of each month and averaged it? A. I believe so. I don't know exactly how they did it.

THE COURT: But quits are not averaged, that is an actual –

THE WITNESS: That's right. That is the total number of quits during the course.

THE COURT: And the same with terminations?

THE WITNESS: Yes.

THE COURT: All right.

BY MS. WEYAND:

Q. So if the average employment went up substantially during the year, there were a lot of new hires, you would not have that reflected here, the quits as to
753 the increased employment would show a low turnover rate which would really be, if the total employment hadn't gone up, the quits would have been a lower turnover rate, is that correct? A. Excuse me. Would you repeat the question?

Q. It is not reflected here if you started out with 2,000 employees in the plant and it remained 2,000 and 200 quit during the year you would have a ten per cent turnover rate, is that correct? A. Yes.

Q. But if the employment, total employment in the plant went from two to four thousand and you still had 200 quits you would have a ten per cent turnover rate? A. You would have less because you would use a 3,000 as your average.

Q. You would have seven and a half? A. Something like that.

Q. Yes. If it had gone up there more – A. Right.

Q. So increased employment is only reflected in the average of employment? A. Yes. Because in some
754 plants it might have gone the other way.

Q. Do these figures represent the production and maintenance employees only or do they include the salaried, all employees in the plant? A. They include all employees.

Q. Supervisory? A. Yes.

Q. This is not a turnover rate based on the production-maintenance employees? A. No. All employees.

Q. Do you have figures on the turnover rate in the production and maintenance unit? A. No.

Q. In the objections to interrogatories GE said it had a 40 per cent turnover rate. Were you acquainted with where that figure came from? A. No.

Q. Were you acquainted with the fact that they filed that figure here in court in answer to interrogatories? A. I heard the number, but where it comes from –

Q. As far as you know nobody on your staff figured that figure out and gave it to them? A. No.

Q. You don't know where the lawyers got the 40
755 per cent figure? A. No.

Q. Don't know whether that is applicable to production and maintenance employees as distinguished from an employee complement made up of production and maintenance and technical and salaried, engineers and so on? A. No. I don't know. As I say I don't know where that 40 per cent comes from. It sounds high to me.

Q. Have you had occasion to previous – have you had previous occasion to figure turnover on a company-wide basis? A. Yes.

Q. How recently did you figure turnover on a company-wide basis? A. Well, from my operation we issue a report that is prepared by our corporate personnel accounting operations on turnover, and that is done quarterly.

Q. That is based on all employees? A. Yes.

Q. You do no turnover figures on production and maintenance employees as such? A. I don't. No.

Q. Has your department ever done, as far as you
756 know, a turnover on production and maintenance employees? A. To my knowledge, no.

MS. WEYAND: That is all the questions I have.

THE COURT: All right. Any redirect?

MR. KAMMHOLZ: May I have one moment, Your Honor?

THE COURT: All right.

THE WITNESS: May I add something here?

REDIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Would you like to add something to you testimony? A. Yes. To the question –

THE COURT: You know, I admire an alert attorney.

THE WITNESS: I believe I corrected, I answered incorrectly in your question about information broken out by production and maintenance employees. The quarterly reports that we issue are broken down by hourly non-exempt salary and exempt. I am sorry.

MS. WEYAND: Hourly are done on a nation-wide basis?

757 THE WITNESS: Company-wide.

MS. WEYAND: I am sorry.

THE WITNESS: I am sorry for that.

THE COURT: All right, sir. Do you have any further questions?

MR. KAMMHOLZ: Just a few, Your Honor.

BY MR. KAMMHOLZ:

Q. On direct examination you testified with respect to those exhibits as to quits and terminations, did you not? A. Yes.

Q. You were asked some questions about turnover on cross-examination. What did you understand turnover to relate to? A. I would assume terminations. People who leave the employment of the company.

Q. This is the context in which you answered the questions? A. Yes.

MR. KAMMHOLZ: No further questions.

THE COURT: All right. Any recross?

MS. WEYAND: No. I don't believe so.

758 THE COURT: All right. Help the witness down. Thank you, sir. Unless I hear an objection the witness will be excused.

(The witness stood aside.)

* * * * *

762 PROCEEDINGS

(July 26, 1973) (Thursday at 9:30)

THE CLERK: Civil Action 142-72-R. Martha V. Gilbert, et al., versus General Electric Company.

Continued from yesterday.

THE COURT: Good morning.

* * * * *

All right, call your next witness, please.

MR. KAMMHOLZ: Mr. Hilbert, please.

THOMAS F. HILBERT, JR., was called as a witness by and on behalf of the defendant and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Your full name and residence address, please, Mr. Hilbert? A. Thomas F. Hilbert, Jr., 91 Davis Avenue, White Plains, New York.

Q. Are you an employee of General Electric Company?

763 A. Yes.

Q. What is your position with the company?

A. Labor Relations Counsel.

Q. How long have you held that position? A. Since 1960.

Q. Would you state for the record, please, briefly, the job description relating to Labor Relations Counsel?

A. Well, in effect Labor Relations Counsel is the lawyer in corporate headquarters who advises the corporate Employer Relations operation on legal and contract matters relating to employee relations and act as consultant to operating lawyers in the field in that area.

Q. You have a staff reporting to you? A. I have two lawyers assigned to me, yes.

Q. Very briefly, Mr. Hilbert, what is your background in terms of education? A. I went to Fordham College, A.B. and Fordham Law School.

After law school I went into the Army. And when I left the Army I joined a New York law firm of Cravath, Swaine, and Moore, working primarily on labor relations matters.

764 In 1950 I joined GE as an attorney in the Apparatus Department and in 1960 was appointed Labor Counsel.

Q. Have you participated in collective bargaining negotiations with the unions with whom General Electric has bargaining relationships? A. Yes.

Essentially GE bargains with two unions on a nation or corporate headquarters basis. One is IUE and the other is the UE.

During the years 1952 and 1954 I participated in, on an in-and-out basis, in the negotiations with those unions. Again in 1955. And in national negotiations since then until this year I participated pretty much full time in those negotiations.

This year I participated again only on a part-time basis.

Q. Mr. Hilbert, are you familiar with the General Electric Company benefit plans and programs including the General Electric insurance plan since 1950? A. Yes, I am.

Q. Will you describe for us briefly, Mr. Hilbert, GE's experience in matters of race and sex discrimination?

A. Well, in my opinion the company's record has been

765 quite excellent in this respect. The company has never been found guilty by any adjudicatory agency or any court of a violation of any discrimination law, sex or race. This includes not only Title 7 of the Civil Rights Act of 1964 but also the many state laws that have been in existence covering these subjects in states where we oper-

ate since the post-war period, during and since the post-war period. In addition every plant and office of General Electric Company is covered by the Presidential Executive Orders, particularly the one that prohibits discrimination on account of sex, which was issued in 1967.

We have had hundreds of compliance reviews by federal agencies as to our compliance with that Executive Order and have never been found out of compliance by any such agency.

Q. Will you relate briefly the bargaining history of GE with IUE on anti-discrimination language? A. Well, the company began bargaining with IUE in 1950. That was our first negotiations. That year we signed our first contract.

In that year a non-discrimination clause was negotiated which covered race, color, creed, religion, national origin.

In 1955, as I recall, we added sex to the pledge in the
766 contract that the company had. The union pledge agreed that they would not discriminate on account of sex in addition to the other considerations.

Q. Was this language changed at a later date in 1962? A. Well, I should have said that.

In 1955 the contractual provisions said it is the policy of the company, the union, and its locals, not to discriminate on account of race, color, religion, sex, and so on.

In 1963 we and the union agreed to change that to a flat provision reading, "The company, the union, and the IUE Locals, shall not discriminate against any employee on account of race, color, sex, creed, marital status, or national origin."

Q. Is this contract language contained in your current agreement with the IUE? A. Yes, it is.

Q. Does that agreement provide for mandatory arbitration on matters arising under the language you have re-

ferred to? A. No. Not of that – the contract itself contains an arbitration article which makes arbitration
767 mandatory for certain subjects in the contract, but makes other subjects arbitrable only on a mutual submission, on a voluntary mutual submission basis, but the provision that I read to you is not arbitrable as a matter of right.

Q. May I turn now to the bargaining history with the IUE on sickness and accident benefits on the subject of related pregnancy?

What provision has been made in GE-IUE agreements since 1950 on the subject of sickness and accident benefits? A. Well, in our first negotiations with IUE in 1950 we negotiated a broad agreement, collective bargaining agreement, which included wages and many conditions of employment, and it also provided for a number of benefit plans, pension plan, insurance plan, and others.

The insurance plan itself provided life insurance, medical expense insurance, accidental death and dismemberment insurance, and so-called sickness and accident disability insurance. Under this provision employees who were totally disabled because of sickness or accident would receive partial makeup pay while absent.

And this provision also included the language which
768 is currently in issue here which makes specific that benefits under the weekly sickness and accident insurance are not payable for an absence due to pregnancy.

Q. And when was this provision first incorparated in the GE-IUE contract? A. In the 1950 negotiations.

THE COURT: May I interrupt and ask you, is that the only expressly excluded disability, Mr. Hilbert?

THE WITNESS: Yes, sir.

BY MR. KAMMHOLZ:

Q. Will you tell us what happened after 1950 on the

subject of sickness and accident benefits? A. Again I was not present in the 1950 negotiations, but reviewing the records and speaking to those who were, it appears that the union had no objection to the exclusion of pregnancy from the plan in the negotiations.

MS. WEYAND: I object to that as hearsay unless you state the basis on which you understood that the union did not object.

THE COURT: Well, I understood Mr. Hilbert had participated.

THE WITNESS: No, sir, I did not again participate
769 until 1955.

THE COURT: All right.

Objection is sustained.

BY MR. KAMMHOLZ:

Q. What happened in subsequent negotiations when you did participate? A. In the 1955 negotiations the union requested that the so-called exclusion of pregnancy absences from S and A payments to be modified so that female employees absent because of pregnancy would receive a maximum of six weeks of weekly S and A payments. This is against the plan maximum of 26 weeks for sickness and accident absences. During the course of the negotiations the union demand was not accepted and a contract was signed without change.

Q. The '55 agreement, as I recall it, was a five-year contract? A. Yes. That's right.

Q. What occurred in the 1960 negotiations? A. In the '60 negotiations the union made no demand for any change in the contract in the S and A plan and the plan, as it had previously existed, was incorporated without change in the 1960 agreement.

Q. The agreement executed in 1960 was for a three-
770 year term, was it not? A. That's right.

Q. And in '63, '66 and '69 agreements were executed with the union? A. That's right.

Q. What change, if any, was made in the union contract language with respect to sickness and accident benefits? A. Well, in respect to the exclusion of pregnancy absences there were no changes.

In each of those negotiations the union repeated its request that there be an allowance of maximum of six weeks for such absences, but the requested change was not agreed to and the contract as executed retained the existing language.

Q. During these negotiations, Mr. Hilbert, and I ask you to state in summary form, what was the nature of the discussions with IUE on the subject of demands concerning maternity leave? A. The discussions were in each of the years, '55, '63, '66, and '69 very brief, very minimal.

MS. WEYAND: I object to this as not the best evidence.

We have the portions of the minutes in the record of
771 the recent negotiations, and I believe the minutes speak for themselves.

THE COURT: Well, I don't belief you can get everything in the minutes, though.

No, I am going to hear it.

Go ahead, sir.

THE WITNESS: In 1955 the union broached the subject by saying that General Motors had just given the six-week maximum for pregnancy absences under this plan, which is a 52-week plan. They pay weekly sickness and accident benefits for everything other than pregnancy for 52 weeks maximum.

But in 1954 they apparently agreed to the six-weeks maximum for pregnancy.

The union's discussions and presentations were, as I say,

brief, and we interpreted what they were saying and their opinion and their attitude to indicate that this was a –

MS. WEYAND: I object to the interpretation unless –

THE COURT: That objection may be well taken. I will sustain it.

THE WITNESS: Well, perhaps I should say that in any collective bargaining negotiations one of the functions of,

772 I guess both sides, is to seek to estimate the priority consideration of the other side. Whether in one year it is wages and another year it may be pensions and so on.

MS. WEYAND: Object to any estimate or estimation unless the exact basis for the estimation is given.

THE COURT: I am going to overrule that.

I think the witness is trying to give me a picture and I think I am getting it.

How much time did they spend on discussions of this with comparison with discussions of other matters?

THE WITNESS: Very little. Very little.

THE COURT: All right.

BY MR. KAMMHOLZ:

Q. Your answer – does your answer, Mr. Hilbert, relate to the negotiations in '63, '66, and '69? A. Yes. Yes.

Now, in '69, I think I might mention, that the union made a long list of demands at the beginning of negotiations, including the demand for the six-week provision for pregnancy absences.

Subsequently we made an offer which did not include it. Subsequent to that the union indicated to us that

773 they had given up their demand for the six-week premium – the six-week benefit for pregnancy absences.

They of course had many, many other demands that they were insisting on throughout the contract and throughout the strike that followed it.

Q. Turning now to the mid-'60's, and calling your attention particularly to 1964 and the enactment of Title 7 of the Civil Rights Act of 1964, let me ask you this question: In your administration of the contract did GE recognize any potential problems under Title 7? A. Yes. I felt that once the Act was passed I should review our contracts generally and our practices generally and seek to turn up any potential problem, no matter how remote it might seem.

In the area of benefits and sex discrimination two of the areas that it seemed to me possibly might be a consideration at some point in time were one, this exclusion of pregnancy from S and A, and another provision in the pension plan which permitted women to retire earlier than males, male employees.

Of course the first one if argued would have been argued as discrimination against women, and the second would have been argued as discrimination against men.

774 Q. Did you consider views expressed by EEOC in connection with either of these subjects? A. Well, yes.

When the Act was passed it was passed in the context of the existence of a number of statutes in states in which GE operated, as I have indicated, which for years had prohibited sex discrimination.

Many of those Fair Employment Commissions in those states charged with the enforcement of those Acts were aggressive and we had many complaints and investigations over the period of time prior to 1964.

At no point in time did any state agency ever question the exclusion of pregnancy from the S and A benefits in the period beginning 1950 through 1964.

Now, in addition to that – well, that was a predicate for my belief that there was no legal problem in that exclusion.

I felt also that there was no problem in the exclusion, in the provision for earlier retirement for females than for males.

Subsequently in the labor services, particularly the one published by Commerce Clearinghouse, there appeared an opinion letter by the General Counsel of the EEOC.

Q. Showing you what has been received in evidence
775 is Defendant's Exhibit 5. I ask you whether that is a copy of the opinion letter to which you refer? A. No.

Q. Is it an excerpt dealing with the subject matter of that opinion letter? A. Yes. This is a summary in the CCH Employment Practices Service of the letter itself.

Q. Showing you now a copy of what has been received as Defendant's Exhibit 4, I ask you whether that came to your attention? A. Yes. This is the opinion letter of the General Counsel, Equal Employment Opportunities Commission, dated October 17, 1966, and released December 9, 1966.

Q. Did you rely on those opinions letters? A. Yes.

I informed management that this confirmed my feeling based on the existence of state laws without any question of our exclusion it confirmed my belief that there was no violation of law in the exclusion of pregnancy under the S and A benefit.

Q. Subsequent to that time, when did any information come to your attention which might cast a shadow over the validity of the opinion letters that you have described? A. Well, as I recollect, sometime in May,
776 1971, another opinion letter, another – not another but a decision of the EEOC, it appeared in CCH.

Q. Would you have this marked, please?

THE COURT: Do you have to have it marked or is it already marked?

MR. KAMMHOLZ: It is not marked.

BY MR. KAMMHOLZ:

Q. Mr. Hilbert, would you look, please, at the document marked Defendant's Exhibit 52 for Identification, and would you tell me now whether –

MS. WEYAND: May I see this, please?

MR. KAMMHOLZ: I am sorry. I am sorry, Ms. Weyand.

MS. WEYAND: This is a reference to a decision which I listed and offered the full decision as Plaintiffs' Exhibit 63 and Your Honor rejected it on the grounds that it was –

THE COURT: On the grounds that it is not necessary to put those in as exhibits.

I will consider them anyway. I will consider any authority.

MS. WEYAND: This is an excerpt from it, not the full decision, and I think –

777 THE COURT: I don't know the purpose for which it is being offered, and it hasn't been offered as yet, so I cannot rule on an object if it hasn't been.

Now, would you look at that?

BY MR. KAMMHOLZ:

Q. Would you look at it again, please, Mr. Hilbert? Specifically decision number 71-1474? A. Yes, sir.

Q. And the reference is to CCH Employment Practice paragraph 1310.25? A. Yes.

This is a summary of the decision itself rather than the decision.

Q. And is this the decision to which you referred?

A. It summarizes that decision.

Q. Summarizing the seeming change in direction by EEOC? A. Yes.

MR. KAMMHOLZ: Your Honor, I am not going to offer it.

THE COURT: There is no need.

MR. KAMMHOLZ: I think it has been identified.

778 THE COURT: I can think of a way to get it in if it is important, but I will have to make my own summary ultimately, I guess.

BY MR. KAMMHOLZ:

Q. Do you recall, Mr. Hilbert, whether in April, 1971, CCH still continued to publish the General Counsel's decision which has been referred to here as Defendant's Exhibit 4? A. Yes. They continued to publish that until, my recollection is, about May of '71 when the decision we spoke about appeared in the labor service.

Q. In 1971, May, 1971, there was in effect between GE and IUE a three-year term contract continuing to what date? A. The contract ran from January 28, 1969, to May 26, 1972.

January 26, 1970.

Q. 1970 to what date? A. To May 26, 1973.

Q. And EEOC guidelines dealing with maternity leave issued in April, 1972, did it not? A. Yes, that's right.

Q. What was the first communication that you had from IUE on the question of discrimination, alleged dis-

779 crimination, relating to maternity benefits? A. Well, John Shambo, who is the Chairman of the IUE Conference Board that deals with GE, sent a letter dated February 24, 1972 to John Baldwin, who is Manager of Relations for General Electric Company.

Q. Will you look, please, at the document marked Plaintiffs' 110, and would you tell us whether that is the letter to which you have referred? A. Yes, it is.

Q. You may have touched on this point earlier, Mr. Hilbert, but I want to be sure that it is in the record.

General Electric is heavily engaged in Government contract work, is it not? A. That's right.

Q. And on this account General Electric over the years has been subject to Executive Orders 11236 and 11375? A. That's right.

Q. Issued by the Office of Federal Contract Compliance? A. Well, the Executive Orders issued by the President.

Q. Issued by the President and enforced by the OFCC?

780 A. That's right.

Q. Are those Executive Orders different from the EEOC guidelines of April, 1972? A. Well, the OFCC issued guidelines in, I think, 1970, and those guidelines, these guidelines on sex discrimination, Executive Order 11375 prohibits sex discrimination by Government contractors, the OFCC guidelines as published in the services in effect follow the rationale of the letter of the EEOC General Counsel, which is Exhibit 4, in that it permitted the exclusion of pregnancy from weekly S and A disability benefit payments.

Those guidelines are still in effect and the OFCC still operates under a rule of law under the Executive Orders that permits employers to exclude pregnancy absences from weekly disability payments.

This is also true of the Health, Education and Welfare Department in its guidelines issued with respect to sex discrimination by universities and colleges.

Q. Mr. Hilbert, may I turn now to the formulation of GE's benefit plans, and may I ask you first whether GE considers costs as relevant to the formulation of such plans? A. Oh, yes.

781 Costs are, I guess there is no American company that doesn't consider costs in any kind of benefits.

THE COURT: Just a moment, please, sir.

MS. WEYAND: I believe I have a continuing objection.

THE COURT: As to the relevancy?

MS. WEYAND: I hope it was clear that the objection I made to the exhibits was applicable to the testimony too.

THE COURT: Well, I have already expressed my views on that, Miss Weyand, and I have serious doubts that costs mean anything when you are talking about discrimination. But somebody along the line may feel differently, so I am going to get a full record here and they may even change my mind.

MS. WEYAND: I did want to continue for the record that it is clear that I object to all this line of testimony.

THE COURT: I understand.

All right, sir.

MR. KAMMHOLZ: I think that is the most we can ask, Your Honor.

782 THE COURT: I would think so.

I think I knew that before he said it. Of course they are considered.

BY MR. KAMMHOLZ:

Q. In negotiations, and I refer now particularly to 1966 and 1969, Mr. Hilbert, did the company furnish the union the cost documentation relating to benefit plan proposals? A. Oh, yes. We gave the union a considerable amount of cost information in 1969.

Q. And would you tell us briefly what occurred in the 1960 negotiations – I am sorry, 1966? A. Well, '60 or –

Q. No, – A. Well, this is just an illustration of the impact that costs have on negotiations.

The company had made an offer to the union which included, among other things, four per cent wage increase to be effective, as I recall, April, 1962.

As an option to the union, after the union indicated that there were not enough benefit provisions in our offer,

the company indicated to the union that within the cost framework of one per cent of that wage increase we could provide some benefits.

So we offered as an alternative a three per cent wage

783 increase plus an additional holiday and additional week's vacation after 25 years service.

The union did accept this alternative offer.

Q. The 1966 contract was finally settled in Washington, D.C., was it not? A. Yes, at the culmination of negotiations when the contract was about to expire President Johnson called the parties down to Washington and appointed a sort of mediation panel of the Secretaries of Defense, Labor, and Commerce, and we had to, both sides had to appear before them and that panel insisted on a complete cost justification of every element of our offer, and we understood that the panel itself communicated this cost information to the union.

Q. Now, in 1969 in the negotiations culminating in the 1970 agreement, what, if anything, was done with reference to specific elements of cost under the cost proposal? Or let me phrase it this way: Did the company turn over to the union its cost experience under its major benefit plans? A. Well, yes, we turn over to the union every year the prior year's costs of our benefit plans, by the separate plans, pension, insurance and so on. That may be in evidence, I am not sure, some of the reports that we give.

784 Q. Yes, sir.

Is there in this context, and I am referring now to bargaining over the years, is there concern about cost information finding its way into competitors' hands?

A. Oh, yes. We are also concerned about specific cost information, particularly at the bargaining table. Particularly in some years past, perhaps not as much now, such

information when given, or information when given, we felt, was almost in the public domain and an employer is always, a corporation is always concerned about the value of, in effect, confidential information of this kind getting into competitors' hands for strategic planning reasons.

Q. Turning now to a non-bargaining subject, Mr. Hilbert. Has GE had experience in connection with birth rate among GE employees or wives of employees in the context of a bonus or incentive for births? A. Yes.

October 15, 1953, was the 75th anniversary of GE's existence. So on January 14 of that year the company announced that as a part of the program for noting the anniversary the company would on October 15th, the anniversary, would pay a bonus to any employee, male or female, who had a baby in the family on October 15, 1953. And the bonus was five shares of GE stock. So

785 that if a male or female employee – if a female employee or the wife of a male employee had a baby on October 15 that employee would be given five shares.

THE COURT: When did you announce that? Did you wait until the 15th to announce it?

THE WITNESS: January 14 we announced it for an October 15 due date.

THE COURT: Did you consider all births on that date to be completely voluntary, Mr. Hilbert?

THE WITNESS: I would say yes, sir.

THE COURT: You didn't think that the stock was an incentive to planned parenthood?

THE WITNESS: This I think is – this is perhaps, I should go on and say what happened.

BY MR. KAMMHOLZ:

Q. Incidentally, what was the value of GE stock at that time? A. Well, at about October 15 it was about $78 a share.

The company statisticians, really our public relations people, made a quick calculation that there would be 15 to 20 births on that day, and as it turned out there were 189.

786 Now, I don't know that we can justify the estimate made by our internal estimator, but in any event the talk around the company in October '53 was about almost miraculous percentage rise from the prediction that had been made.

That is the only experience we have had that would indicate that the paying of a bonus or a benefit could have an impact on the number of births.

Q. Mr. Hilbert, what are General Electric's reasons for not paying sickness and accident benefits in a pregnancy case? A. I think they are multiple.

First of all, of course the plan is intended to cover only sickness and accident disabilities resulting from sickness and accident, and it specifically excludes pregnancy which is neither a sickness nor an accident.

Secondly, the plan follows standard insurance practice which historically, traditionally, and still today does exclude pregnancy in most cases from the payment of such benefits.

As we have heard in a few cases there is, let's call it a minimal or a lesser differential in which a plan of some companies might or doles allow a maximum of six weeks for pegnancy disability as against a much greater maxi-

787 mum for absences caused by sickness or accident.

The inclusion of, we believe, the inclusion of pregnancy absences in weekly sickness and accident benefits is really an improper, and improper is not the word, it is just not a rational use of benefit money, and this is where the cost aspect comes in.

We pay a lot of money on benefits to GE employees,

but we feel that we should justify each of them on a rational basis and we feel that for many reasons the inclusion of pregnancy in this kind of coverage is not reasonable and rational.

There are a number of reasons for this.

For one thing, we don't know to what extent the inclusion of this benefit could increase the number of pregnancies. We just have no real way of measuring that.

We feel that the benefit would be subject to abuse, to a stretching of the time of absence.

And we feel that this would occur both before and after delivery.

Before delivery we feel that the natural concern of the mother for the fetus, for the possibility of injury to the child, plus her own discomfort, would tend to stretch the
788 time of leaving before pregnancy earlier than it would otherwise be.

And after the delivery we feel that the natural affection of the mother for the child, in some cases the concern of the mother for the health or well-being or psychological situation of the child, would tend to stretch the post-delivery absence time.

So we feel that this kind of coverage as contrasted with sickness or accident coverage would be subject to more abuse.

THE COURT: Well, if I may interrupt you at this point. When you really analyze it, doesn't it all get, except for your subject A, that you said you didn't know how much it would increase, doesn't it all get down to dollars and cents? Aren't you talking about costs, the abuse, leaving early, staying longer? That all adds up to costs, isn't that what it is?

THE WITNESS: Yes, sir.

THE COURT: Nothing else?

THE WITNESS: Well, in that aspect.

Now, I think I should say that whenever the company or any employer considers a benefit that is proposed or being considered it must and should consider all aspects of the problem.

789 Now, one aspect of this kind of a – of this part of the problem is that the temptation, the normal temptation of the mother before or after delivery to extend her time of absence, if that is going to be paid for, we believe would tend to create a good deal of conflict, of straining of employee tension, grievances, maybe even strikes, because the employee's tendency to move the parameters of her stay before and after beyond the delivery in each direction would be countered by the company's natural, each plant manager's natural desire to minimize the expense.

And as a result we feel that there would in effect be confrontations.

Despite what I think one of the doctors testified, we believe that doctors generally, obstetricians generally, would be sympathetic to the mother and would tend to want to give her the dates she is asking for. To the extent we challenge them we feel that we would be creating grievances, and there would be tension.

THE COURT: That is distinguished from just cost, there is more to that aspect?

THE WITNESS: Yes, sir. But it flows from the cost in that sense.

THE COURT: I understand.

790 THE WITNESS: Then beyond that and looking at the over-all picture, of course, in today's world pregnancy is completely voluntary, and remember the concept of a sickness and accident plan of this kind is to take care of unforeseen, sudden, usually sudden kinds of disabilities.

THE COURT: I don't want to create any more problems,

but suppose – you say completely voluntary. Suppose it is Catholics? Then we get into First Amendment problems, practicing your religion and so forth.

THE WITNESS: I think we can look at it from a slightly different point of view, and maybe statistics in this connection. GE statistics in the record would help.

We have about 300,000 employees. It is slightly more than that. But I think it is, with my poor mathematics, it is easier for me to use round numbers.

Of those 300,000 employees approximately a little more than 40,000 are female employees between the ages of 19 and 40.

This we would consider to be the primary source of childbirth. That is, let's say, one-seventh or one-eighth of the company's employees. This is the general, in general this is the group of employees for whom this benefit would be treated.

791 But we have to limit that even further because in a practical sense again in today's world, which may change in years to come, but in today's world only the married women in that category would be eligible, in effect, would be the ones who would enjoy that benefit.

So we cut the one-seventh or one-eighth in half, I am estimating half, that half of our female employees in that category are married.

We have some figures from Salem which indicate that one-third of all female employees at Salem are married.

But we didn't break it down by age.

So to be conservative we would say half are married. That makes the one-seventh become around one-fifteenth of the employees in the company.

Now, again I don't know how many Catholics or other religions that feel as Catholics do about contraception and abortion, but let's assume a third of our employees

are Catholics. That means that for two-thirds of this one-fifteenth the option is purely voluntary, the option whether to have a child, or if it happens to get conceived, whether to abort is really voluntary.

792 Now, if that were a controlling consideration, if there were no Catholic doctrines, everybody – it would be voluntary for everybody.

And if a Court or any adjudicatory body were to say well, as long as it is completely voluntary, we don't think it should be fitted under S and A. That is not part of the insurance, standard insurance concept. In that event, if we considered the Catholics, what we are really saying, if we hypothesize that kind of conclusion, that voluntariness makes it okay to exclude. Then if we say but, however, there are Catholics who can practice birth control, rhythm and other methods, but nevertheless may get pregnant and may have to go full term, in a sense we are really favoring one religion over another.

And I think it would be improper for the company to propose or the Court to rule that only Catholic employees who have scruples against contraception and birth control, would be eligible for this kind of thing.

THE COURT: I don't think there is any problem with that.

THE WITNESS: So really in a sense from the neutral, let's call it the neutral employer's point of view, point of view of the employer who must be neutral, there is sort

793 of a public relations impediment to seemingly favor one religion over another.

Now, there are other considerations that we have in mind.

And again this flows from the nature of sickness and accident insurance, which is intended to take care of the loss of pay by an employee who suddenly gets sick, who

suddenly breaks his arm. Pregnancy by its nature is a long-term proposition and in today's climate parents plan, most parents, even Catholics, of course seek to plan their pregnancies, their childbirth.

And the planning involves at least a nine-months cycle.

So that employees know some eight or nine months before birth that they are going to have a baby and they can prepare for it; just as if they were to decide in November of one year that they would like to attend or have an extended European trip, they can plan it for the following summer. They can plan for it over that, whatever it is, eight or nine-month cycle. They can put away money. They have savings plans and so on.

They can get themselves ready for it. In a very real sense in today's world planning to have a baby is financially very much like planning to take a trip or to take
794 a course in college, any exercise, any option, almost any luxury, you might call it.

So that we think that that is a consideration that we should keep in mind and which runs against the granting of this kind of benefit.

Now, beyond that, of course, in GE, as in most companies, women utilize, women employees, utilize the S and A benefits more than men. They are absent more frequently and their absences are of longer duration.

Dumping pregnancy on top of this would only further unbalance those already unbalanced scales of utilization.

Again, in General Electric Company about 40 per cent of the women who go out to have babies do not come back. We are somewhat gratified to realize that this is more of our women coming back, 60 per cent, than is apparently true of American industry generally. But still 40 per cent is quite a segment of employees who go out,

don't come back, and therefore, if they were getting weekly sickness and accident payments would be in effect getting a form of severance or termination pay.

Now, we do have a form of severance pay in our contract, but it relates primarily to employees who were laid off. So this in effect would be granting those female
795 employees the kind of termination pay benefit which nobody else has.

Beyond that in a sense the granting of this extension of the S and A benefit plan for pregnancy would be conferring a benefit on women that we would not be able to equally confer upon men. And in that connection we see in terms of employee friction that we foresee a tendency, particularly after delivery, once S and A is paid, to make a kind of allowance for some period of child care. We might not call it that, but I think the pressures of employees and of unions are such that boundaries always get stretched.

And inevitably men would see that women were being paid for staying home to take care of a baby. And we think this would ultimately precipitate a demand for child care leave for men. And we see this as only one step in a sort of chain that has further repercussions.

BY MR. KAMMHOLZ:

Q. Thank you, Mr. Hilbert.

Would you look, please, at the document in evidence as Defendant's Exhibit 50 and tell me whether that is the GE – that contains the GE maternity leave policy in effect prior to 1971? A. Yes. This is a bulletin issued
796 by the company's consultant on health and safety and plant protection on July 7, 1964, and it is entitled "Termination of Active Work During Pregnancy."

Q. Could you summarize very briefly the gist of the policy as it is there stated? A. Well, in effect it

provides that – it reflects the advice of a Medical Advisory Council, council of doctors, primarily industrial medicine doctors, who are pulled together by John Grimaldi, the consultant that issued the bulletin. This is a bulletin issued to all the plants of the company in accordance with the Medical Advisory Council's recommendation. The bulletin in effect provides that women can work beyond the sixth month of pregnancy when the pregnancy is uncomplicated, and may resume work at the end of six weeks following termination of pregnancy.

It reflects, however, a general medical agreement that women should leave at the end of the sixth month, but it is not in any sense a command or requirement.

Q. Would you now, please, look at Defendant's Exhibit 6 and tell us what it is? A. This is a later bulletin issued by the Corporate Medical Operations, a changed name for the same corporate service that had issued the

797 earlier one. It is a health bulletin issued to the field entitled "Pregnancy." And it makes clear that pregnant employees may continue to work beyond the sixth month of pregnancy provided they have the approval of their attending physician.

This is the bulletin which is currently in effect, or this is the instruction which is currently in effect throughout the GE –

THE COURT: Now, a woman can work right up to the day before?

THE WITNESS: Well, a good many apparently have, but the bulletin recommends at the end, it says –

THE COURT: No. No, you misunderstood the question. I don't care what they recommend. I want to know what you do.

THE WITNESS: Well, I would say that that varies, Your Honor.

THE COURT: Is that a policy?

THE WITNESS: There is no company policy on that except for the basic policy statement that they can work beyond the six month if their attending physician permits it, and provided the plant physician has no concern of his own.

The instruction does, however, go on to point out that

798 there are a number of factors that must be considered.

THE COURT: I understand that.

I dislike having to interrupt you, but I want to be sure that we are on the same wavelength.

You said that was simply a recommendation. Now, have you all adopted those, accepted those recommendations in practice? Do you do that?

THE WITNESS: Yes.

As of this time I think they are all accepted and in effect.

But I cannot say that they would all permit an employee to work up to the last day.

THE COURT: Does it preclude an employee working, does your policy?

THE WITNESS: Does not preclude, no, sir.

THE COURT: I guess I will get it.

THE WITNESS: It might be clearer if I – the health bulletin, I should have called it, does state there are many factors that must be considered. First, desire of the individual.

Second, the approval of the attending physician and concurrence by the GE physician.

Third, the maintenance of good health and wellbeing.

799 Fourth, appropriate and safe work assignment.

And fifth, continued efficient work performance.

Now, I think in this connection maybe it would help, and I should say, that the bulletin then recommends

strongly that in any event pregnant employees should discontinue working at least two weeks prior to the expected date of delivery so that the employee may prepare for her confinement and to avoid the complications of early delivery, precipitantly, or other events associated with childbirth.

I think in this connection over the years I have talked to a number of the company doctors and plant managers and to my mind some of the testimony, I guess it was yesterday, Dr. Hellegers did not paint the real world at GE.

It seemed to me that he was talking more in terms of developing trends in medicine or cases that he sees on a sort of consultant basis.

In GE plants the mandatory norm is production. This is what the company is in business for. It cannot in effect afford to be a country club or a relaxed atmosphere.

Many of our jobs held by men and women are tough jobs. They require concentration and a constant, in many cases, constant movement and constant action.

800 The problem that arises in a plant with a woman who wants to work toward the end of her pregnancy is not only the danger to the woman and the fetus but also just efficiency and the concerns of other employees.

Now, in many of our plants we have incentive systems and some of them involve teams, groups that are on group incentive.

In typical group incentive situations, all members of the group must work actively and constantly in order to achieve the incentive goals and rates.

If one of those members has to be pampered because of size or slowness or imbalance because of advancing pregnancy the other members of the team tend to resent it.

So that a manager in a plant, and the plant doctor,

have to consider not only the health considerations, and I must say that our plant doctors are much more concerned about, well, I would say that they are much more malpractice conscious than Dr. Hellegers seems to be, they are industrial medicine doctors rather than obstetricians, but their concerns are for the health of the woman and the health of the child.

But in addition to the health considerations the plant manager and his staff must consider the efficiency of the

801 plant and the concerns of other employees in deciding at what point in time a woman employee should leave.

MR. KAMMHOLZ: May we have these marked as exhibits, please?

THE COURT: Are these marked now, Mr. Kammholz? If not, I would like you to explain why they weren't.

MR. KAMMHOLZ: These, Your Honor, were submitted by us in connection with a proposed stipulation, answers to interrogatories. Plaintiffs' counsel refused to stipulate. They are illustrative of the in-plant application of the policy that Mr. Hilbert has testified about.

I think the relevance comes into play particularly in view of the testimony of Portsmouth's yesterday.

THE COURT: That is not my query.

That is something I will have to decide. The query is why were they not listed and filed prior to now?

MR. KAMMHOLZ: They were submitted to plaintiffs' counsel and plaintiffs' counsel refused to stipulate.

MS. WEYAND: I stipulated –

THE COURT: Just a moment, please, ma'am.

802 I think you are missing – perhaps it is me.

You didn't agree on every exhibit that you put in your list of exhibits as evidenced by the fact that there were objections to some filed by the plaintiff. As you filed some with the plaintiffs'.

I want to know why they were not listed pursuant to the pre-trial order, if they weren't listed.

MR. KAMMHOLZ: They were not listed, and I think the relevance comes into play particularly in view of what happened here yesterday while the young lady from Portsmouth was on the witness stand.

There was received in evidence then the GE employee handbook from that location, and also from Salem. These merely point out that there has been an implementation of the GE policy in other plants.

Now, I don't think it really amounts to a federal case, but it seems to me that if we had a bit more evidence on the subject it might be helpful.

THE COURT: It seems to me, if I could try this case I wouldn't have any trouble deciding it, but that is not the way the system works.

I let the lawyers try it, and I must decide.

There is obviously an objection, and pursuant to the Court's usual practice, if there is an objection, they don't
803 get in unless they were filed as exhibits.

MS. WEYAND: I did not object to them. I did want to state, however, there was not a single plant bulletin that he offered to me that I did not stipulate.

THE COURT: Ma'am, let me ask you, do you have any objection?

MS. WEYAND: I have no objection.

THE COURT: Then they are in.

You will have to supplement your list, I assume.

MR. KAMMHOLZ: Should they be marked now or later?

THE COURT: I would like to put the burden on you. The clerk has enough to do.

MR. KAMMHOLZ: I would like to mark them now.

THE COURT: We can mark them in sequence, but

you must file a list describing them. I won't have my clerk sitting over here spending all his time trying to figure out what they are.

While we are waiting for that, Mr. Hilbert, let me ask you if under your policy a woman is being treated simultaneously for her pregnant condition and hypertension, for example, a latent situation which came about as a result of or at least came to the forefront as a result of
804 this rapid gain in weight that the doctors have been talking about, does she get disability?

THE WITNESS: No, sir.

THE COURT: Why not?

THE WITNESS: Well, because in effect I guess the short answer is because the language of the plant excludes any disability resulting from pregnancy.

THE COURT: But supposing it didn't result from pregnancy, it was there all the time, or a condition that was there that wasn't noticeable, wasn't known?

THE WITNESS: Well, under the language of the plan it is our contention, and we have applied it to it this way, in that situation the benefits are not payable.

THE COURT: How about the chap that goes off on a gourmet holiday and comes back with a rapid weight gain and starts being treated for hypertension. Does he get disability?

THE WITNESS: If he is under the care of a physician who certifies that he is sick and disabled, he has suffered total disability, inability to work because of sickness, then we will pay.

Of course if he is being treated at home the plan does not pay for the first week.

THE COURT: I understand.

805 THE WITNESS: First eight days.

THE COURT: Do you pay for elective surgery time out?

THE WITNESS: I beg your pardon?

THE COURT: For elective surgery, a fellow says I have decided to have my nose straightened out.

THE WITNESS: That is elective cosmetic surgery. We do.

THE COURT: What I had in mind was a hair transplant, but just anything.

THE WITNESS: We pay weekly sickness and accident benefits for time lost from work, but do not pay the medical expense of that.

THE COURT: But he does get disability benefits?

THE WITNESS: Yes, sir. To the extent that we have it.

This almost never occurs.

THE COURT: But isn't that voluntary?

THE WITNESS: Yes, sir. In that sense. But it is a minimal occurrence. It is a de minimus problem.

THE COURT: Then you get back to dollars and cents. You pay it because it doesn't cost you?

THE WITNESS: In that sense, yes.

806 THE COURT: All right.

MR. KAMMHOLZ: I am nearly through, Your Honor

THE COURT: So am I.

BY MR. KAMMHOLZ:

Q. Mr. Hilbert, do you have the current earnings level of GE employees in 1973 to date? A. Yes.

The current earnings level of male employees in the company is at an annual rate.

Q. A projected annual rate? A. Projected annual rate of approximately 10,000 a year. That includes overtime.

Q. What is it wihtout overtime? A. May I check quickly?

Without overtime my recollection is it is $9,200 at the

rate of $9,200 per year.

Q. What is it for female employees? A. For female employees the overtime rate was $7,750 average.

Q. And the straight time without overtime?

A. $7,200.

Q. And what is the lowest job rate in GE? A. It is $2.74 an hour for both men and women, which I think comes out to $5,700 or $5,800 annual straight time.

807 Q. Mr. Hilbert, were you in the courtroom yesterday when a young lady from Portsmouth testified about dire circumstances in which she found herself? A. Yes.

Q. Does GE have an emergency aid program?

A. Yes.

I was somewhat distressed at the plight she described because we have a plan called the emergency aid program which is designed for sudden emergencies, financial emergencies. This plan permits the loan without interest of up to $300 to an employee and up to $500 with a minimal interest, four or five per cent, I am not sure what the current rate is, which is, can be paid back through payroll deductions after the emergency passes.

The company's operation of this plan has been very liberal. As a consequence I checked with the Portsmouth plant yesterday after her testimony and they informed me that she had not applied for emergency aid under the plan and they didn't know why.

THE COURT: What constitutes an emergency?

THE WITNESS: Well, the plan –

THE COURT: Unsuspected events?

808 THE WITNESS: An unexpected financial disaster.

THE COURT: But you have been telling me that everybody knew the baby was coming and I follow that.

THE WITNESS: But here personal disaster was that she had no money, which we don't anticipate in the usual

pregnancy or in any pregnancy. She was listed as a married employee and in that situation we don't anticipate or look for financial disasters.

In addition, they told me that she had money in the company savings plan which she – that was a small amount, something like $66, but she didn't seek to withdraw that, which she could have withdrawn immediately. It concerned me primarily because obviously an employer cannot protect against every one of life's difficulties, but we feel that we have a balanced program of benefits and that we have one designed for this sort of problem.

MR. KAMMHOLZ: May I have the exhibits?

THE COURT: I will give you an opportunity before the witness is through before you cross-examine to examine them more closely.

MR. KAMMHOLZ: I think, Your Honor, I can, without too much difficulty, do this in summary form.

THE COURT: All right.

809 BY MR. KAMMHOLZ:

Q. Mr. Hilbert, would you look at Defendant's Exhibit 53 through 60 for identification and tell me in summary form what they are? A. These are employee handbooks and pages from employee handbooks and other communications to employees at a number of GE plants, which include, among other matters, the description of the rules for maternity leave.

THE COURT: Thank you, sir.

MR. KAMMHOLZ: That is all, Your Honor.

THE COURT: All right.

It may be appropriate to take – I imagine cross-examination might be a little protracted, I hope not, but it might be.

Help the witness down, please.

(The witness stood aside.)

THE COURT: Mr. Hilbert, don't misinterpret the questions. If we had a jury I wouldn't ask any, but since I must determine the facts there are some things in my mind. It doesn't mean they are material, but things I want to find out.

Thank you, sir.

You may step down.

810 THE COURT: We will take a brief recess.

(A recess was taken at 10:48 to reconvene at 11:05)

(The witness resumed the stand.)

CROSS-EXAMINATION

BY MS. WEYAND:

Q. Under the insurance plan, if you would look at page 33 of Plaintiffs' Exhibit 6, the provision there in the next to the last full paragraph on the page provides that weekly sickness and accident benefits will be discontinued on the date you cease active work because of total disability or pregnancy. This provision means that if a woman has an automobile accident two days after she goes on pregnancy leave she does not get sickness and accident, is this correct? A. That's right.

Q. Turning to the next page on page 34 under the heading of "Layoff and Leave of Absence," looking at the last sentence in that large full paragraph just below the middle of the page, it says that sickness and accident benefits will not be payable for any period of disability which begins more than 32 days after layoff or leave of absence accrues? A. That's right.

811 Q. This means that anyone who is on leave of absence that has an automobile accident after two days * * * [they go on] does get accident and sickness benefits?

A. That's right.

Q. It means that a person who is on layoff on an

automobile accident 20 days after they go on layoff gets sickness and accident, does it not? A. That's right.

Q. And get sickness and accident beginning after eight days unless they are in the hospital, then from the first day they are disabled up until 26 weeks, even though they would not have been working because they were on layoff, is that correct? A. That's right.

Q. A person who is on vacation, goes off for two weeks vacation, he has an automobile accident the second day, he gets his vacation pay and he also gets sickness and accident from the time he goes to the hospital or eight days after the accident begins, does he not? A. That's right.

Of course vacation time is time off with full pay in itself in effect equivalent to being at work.

Q. He gets both of them? A. That's right.

Q. He gets his full pay plus sickness and accident
812 on that vacation? A. Wait a minute.

Yes, he would. He or she.

Q. Yes, yes. He or she. Correct.

Now, assuming a man is on layoff, a sudden layoff, is buying a home, has had trouble making his budget, he goes on layoff, and about three weeks after he goes on layoff he goes to his doctor and says, "I have an ulcer, I am in a nervous condition, so upset having this layoff I didn't intend to have, and I don't have any income and I really think I need to go to the hospital, I am sure I am bleeding."

He has four children. Is there any more incentive for any doctor to malinger and help a woman stay off on pregnancy when she has a husband and earning and she goes off on pregnancy than there is to have this man malinger? A. Remember that the man on layoff is receiving unemployment insurance benefits and under our

contract he is guaranteed 50 per cent of his normal income.

Q. Budget doesn't allow him. He is going to lose his home with 50 per cent. He was on a close budget before, I told you. A. I guess we could accept any hypothetical case that would present problems to anybody
813 under any program.

Q. There is no more incentive for both the employee and doctor to cooperate in malingering when a man goes on lay off, with a family, a family trying to buy a home, than there is with a woman in pregnancy, wouldn't you agree with me? Generally isn't that true? A. It could be true, but we have had no experience with it. I know of no such situation that has ever occurred that has come to my attention.

Q. All right.

Now, if an employees goes on strike and the third week of the strike he is injured on the picket line and goes to the hospital, he gets sickness and accident benefits, does he not? A. No. He does not.

Q. He does not? A. Unless we make arrangements to continue it.

Q. What? A. Unless we make arrangements to continue S and A. Paragraph three on pages 34 and 35.

Q. 1969 would he have gotten S and A in that situation? A. In 1969 I think we voluntarily agreed to continue S and A for, I think, 31 days following the
814 beginning of the strike; but that is at the company's option, any time a strike occurs, as to whether or not it gets cut off right away as paragraph three provides, or whether it can or should be extended.

Q. It has been the custom of the company to continue it for 31 days, has it not? A. We have done it on a number of occasions. I can't say that we do it

all the time.

Q. And on occasion you did, if he was injured on the picket line, was taken to the hospital, he got paid, is that correct? A. If it happened within the period of time that we extended it, yes.

Q. Now, having regard to the Defendant's Exhibit 4, the CCH summary of alleged opinion in which you based your reliance, that is Defendant's Exhibit 4 – I don't have it. Yes.

You will notice that under this plan, or the facts, we do not know who the company is, the EEOC relied on the fact that there were certain exclusions from the male for recovery, he would not have recovered in the picket line situation, very likely he would not have required –

A. I don't see that.

815 Q. On Exhibit 4. A. Yes.

Q. Goes down. You further state that there are three exclusions, namely that disability must not be, one is for pregnancy, the one we are talking about, two is due to intentionally self-inflicted injury – now you paid for an attempted suicide, I understand? A. I don't know that we have ever had one, but if it came up I think we–

Q. You stipulated that in answer to interrogatories that yes, you had paid. And too, you had an established policy of paying? A. Yes, in our opinion it is really a nonexistent problem. Certainly it is not like 3,000 births a year.

Q. But you stipulated you had paid and you had an established policy of paying. This company would not have paid in this situation? A. That's right.

Q. Self-inflicted injury.

And also says a disability resulting from the commission by the employee or attempt to commit an assault or battery or felony. In most picket lines arbitrators – plans

under that would exclude a situation where there is vio-

816 lence on the picket line, assault, and depends on who is the attacker, but you would cover it regardless of whether he was the attacker? A. What we cover, Miss Weyand, is a disability resulting from an accident no matter how the accident occurs.

Q. Correct. This company did not? A. We don't usually know how the accident occurred.

Q. Right.

This company had exclusions from its plan which the EEOC thought were worth mentioning? A. Right.

Q. Now, I would like to go back to -- A. Well, in that connection of course the opinion in itself makes no reference to those other two minor exclusions and the rationale of the opinion is clearly stated, the commission's policy in this area does not seek to compare an employer's treatment of illness or injury with his treatment of maternity since maternity is a temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees. So the rationale of the General Counsel's letter obviously prescinds completely from these two other minor exclusions.

817 Q. Don't you think you might regard the rationale of the present decision, if you have a plan that pays for things that obviously aren't sickness and accident, as for instance elective plastic surgery, that the plan might be discriminatory when it failed to pay for pregnancy?

A. Well, in my opinion you have to put things like this in context.

We could conjure up perhaps exclusions of the nature that this company in the opinion letter had, things which almost would never happen, which almost never or never, and in our experience the elective plastic surgery falls in that category.

Q. Have you made a specialty of the subject of sex discrimination, as a lawyer? A. I would say no. I cover the whole field of the labor law.

Q. Are you now the Chairman of the Subcommittee of the Labor Laws Section of the American Bar Association on Equal Protection? A. Equal Employment Opportunity Law, it is a committee rather than a subcommittee.

Q. I am sorry. I did not mean to low rate you. I am sorry. I apologize.

818 That includes sex discrimination, I take it? A. Yes. All forms of discrimination under the current discrimination laws and Executive Orders.

Q. That is the only section of the Labor Sections of the American Bar Association which makes a specialty out of sex discrimination, is that correct? A. It is the only committee of the Labor Law Section. There is another committee of another section which deals with civil rights. I think they are really three or four committees over all that deal with civil rights questions. It is all, of course, interrelated.

Q. Now, had you had occasion to look into the payment of sickness and accident benefits for disabilities arising from a pregnancy prior to the time that Title 7 was adopted? A. Well, we have the provision in the plan. We have had it since 1950. I guess I am not sure of what context you had in mind.

Q. Do you look up the law to see what precedents there would be which had held that it constituted sex discrimination not to pay sickness and accident benefits for pregnancy prior to the time that Title 7 was enacted? A. Well, I don't recall that I made any specific research project of it.

819 As I said, we have been living for years, decades really,

under state discrimination laws and had never had any problem raised even though we had many investigations, many cases involving alleged discrimination.

Q. You had many issues involving sex discrimination raised in the plan at grievance procedures and –

A. Yes, when you consider a period of years why, I guess you could use the word "many."

Q. When Title 7 was enacted did you do a thorough research job on the subject of paying maternity or sickness and accident benefits? A. I would say no.

Q. You did not? A. No. I assumed that Congress passed the law in the context of the approach to state agencies, and since there had been no problem in our case with any state agencies I assumed that Congress was carrying forward that same concept or rule. And of course when the General Counsel's letter appeared about two years, a year after the effective date of the Act, in effect it confirmed my feeling this is what Congress had in mind.

Q. Do you know to what employer this alleged, any of these alleged General Counsel's opinions were issued?

A. Well, when I saw this one in CCH it was about May

820 of '71. No, I am sorry. No, I don't know this.

Q. One of them in 1966, do you know? A. Right.

Q. In 1971 you made an effort to find out?

A. Yes.

Q. Did you make any effort to find out in 1966 the employer to which it was issued? A. No. Because the inquiry doesn't describe, the General Counsel's letter does not describe the company involved. It described it as in a certain business and with a certain number of employees.

Q. And this one, you do not know any more facts than are stated in the letter? A. That's right.

Q. Isn't it accepted law that to be a General Counsel's opinion on which you can rely the opinion must be given to the employer who relies upon it and be issued with the direction of the Commission? A. Well, what you are asking now is whether we are claiming, and we do claim full protection under, I guess it is Section 713(b). We do claim that, but –

Q. And you claim this is – A. In addition.

Q. This is the letter on which you claim such reliance,
821 is it? A. Yes. This letter. There were other statements of the Commission that I think confirm that, tend to confirm it.

Q. Was there any letter addressed to General Electric– A. No.

Q. – by the EEOC? A. No. We didn't ask for an opinion on this.

Q. And you never received one? A. No.

Q. You rely on any letter issued to any company whose name you know? A. No.

Q. Do you rely on a letter issued to any company with the direction of the Commission that the letter be issued? A. I guess I am not sure I know what you mean.

Q. The Federal Register reciting the ruling or regulation of EEOC says that for the purposes of reliance it must be issued with the – pursuant to the direction of the Commission. And I wondered if you can point out any letter issued with the direction of the Commission on which you rely? A. Well, at about, sometime later,
822 of course, this letter stated in the CCH service, my recollection is, I think one of the exhibits indicates as late as April 22, 1971.

Q. You had nothing but the CCH? You have no other copy of the letter or anything else but the CCH

print that you have here, is that correct? A. That's right.

Now, I am not sure I know how to answer your question, your earlier questions, Ms. Weyand, but the CCH also published another letter, not a letter, a decision of the EEOC, dated December 16, '69. This was published while we were negotiating in '69.

Q. You mean the EEOC published it? A. Not a letter. I say letter, I mean it is a decision.

Q. Was the EEOC the one that did the publishing? A. Well, the CCH published it, but it is listed or published as a decision of EEOC.

Now, that dealt with a question of giving leave to women for pregnancy purposes, but the opinion, the decision, rather, of the EEOC as published in CCH, says "in an opinion letter dated November 15, 1966, the Commission's
823 policy was stated as follows: The Commission policy with respect to pregnancy does not seek to compare an employer's treatment of illness or injury with his treatment of maternity since maternity is a temporary disability unique to the female sex."

Now, this is a paraphrase, really, of the language that the General Counsel had used in his October, 1966, letter. It is almost the same. It is just changed slightly.

Q. That is the letter in which they said because there were a list of the exclusions and showed it was quite a different plan than your plan, it was a narrower plan? A. Well, they listed them but didn't refer to them in the opinion.

Q. But listed them in their decision, did they not? You mean didn't refer in the paragraph where they gave their reasoning, is that what you mean? A. That's right.

Q. It is listed in the opinion? A. Right. To my

mind the reasoning indicates that they paid no attention to the other exclusions.

Q. You think they put them in the opinion because they didn't pay attention, they thought they were irrelevant when they listed? A. Yes. I think the opinion
824 itself fairly read requires that conclusion.

Now, in answer, though, to your earlier question, this decision of the EEOC in December of '68 over three years later refers in itself to an opinion letter dated November 15, 1966.

Now, I have not seen that letter, at least I had not seen it until perhaps a few weeks ago.

I certainly didn't see it in 1969.

But that indicated to me that there was more than one opinion letter on the subject and I think a reasonable conclusion was that in 1966 EEOC obviously released one opinion letter on this general subject in order to avoid overpublication, let's call it.

You have no facts except just the inference from what–

A. That's right.

Q. – facts that you have here stated? A. I have the reference, incidentally, to the EEOC of this decision, which is paragraph 6084, if you would like it.

I don't think it is in evidence.

Q. There is no indication that the other opinion that it referred to may not have had other facts which dis-
825 tinguished the plan from your plan? A. Well, at that time I did not. Will that suffice?

Q. You are not the Employee Benefits Manager are you? A. No.

Q. You are not in that field. Yours is the legal department, is that correct? A. That's right. Yes.

Q. And in stating that you did not – that the company when it received the February, 1972, letter from

John Shambo, you did not mean to suggest that the facts stipulated here, that Mr. Friedman pointed out the EEOC decision to Mr. Willis, who is your Employee Benefits Manager, did not constitute notice to the company of the union's position, did you? A. I have no knowledge of that.

Q. Yes. A. If we –

Q. So you are just speaking of the legal department, as far as you are concerned? A. Yes.

Q. Didn't mean to suggest there weren't attempts to file claims in August, as was specified here, and that Mr.
826 Willis took it up and there was directions give to Salem that you have not – you are not meaning to say that didn't happen or anything? A. No. I had no knowledge of it myself.

Q. Do you have knowledge of whether or not the UE during the 1940's had made attempts to secure six weeks of sickness and accident benefits from GE? A. I don't.

Q. You don't know whether they did or not?

A. I don't know.

Q. And you don't know whether the lack of very extensive presentation in 1966 reflected the fact that the UE had made some extensive presentations before and not gotten anywhere. You don't know anything about that, do you? A. You are talking about pregnancy?

Q. Yes, sickness and accident for pregnancy.

A. Well, I hesitate to go back that far. It was ten years before I joined the company, but I have a distinct impression that we never had pension and insurance negotiations with UE.

Now, remember this was in the period before the Inland Steel and W.W. Cross decisions.

Q. 1955 was before Inland Steel? A. You are

827 talking about 1940.

Q. Oh. A. These were the decisions that held that pensions and insurance plans are bargainable.

Q. But you don't know if the union didn't ask before? A. I would have to say I don't know.

Q. You don't know at all.

You don't know whether they made an extensive presentation and it wasn't listened to because it didn't deal with insurance?

THE COURT: No. He doesn't know.

BY MS. WEYAND:

Q. Okay.

In 1955 were you aware of the extent to which your competitors paid sickness and accident benefits for pregnancy? A. My recollection of discussions that we had within the house was that very few of them did.

Q. General Motors is a direct competitor, is it not? The Frigidaire plant that the IUE represents and in which we took a pay cut, and down bargaining historically in 1972, and you make refrigerators, you are direct competitors, are you not? A. In that field, yes.

828 Q. And General Motors, are you aware General Motors had paid sickness and accident benefits six weeks, for pregnancy, in 1972? A. No. That surprises me because in 1955 the union benefits expert, Joe Swire, came to one of the meetings and said, "Why don't you fellows do what General Motors did last year. They gave six weeks for pregnancy."

Q. I am going to – A. So we got the impression that General Motors had just –

Q. You didn't look into it? A. I beg your pardon?

Q. You didn't look into whether they had or not?

A. I didn't.

Q. I am going to have to ask to have marked as an exhibit this.

I am going to ask to have marked for identification, as soon as I can get it out, an answer to interrogatories provided by General Motors in the suit of *Gregg v. General Motors* in which they have a signed statement that they have provided six weeks of sickness and accident benefits since 1948. I have a suit, class suit in General Motors parallel to this one pending in the New York Courts and we just got an answer which I brought along, and I will

829 ask to have it marked.

THE COURT: Do you want to wait until they decide that one?

MS. WEYAND: I hope not.

I hope to have a precedent from Your Honor which they will follow.

No, I have a very delightful and fair judge there, I believe, too.

I am given to picking out delightful and fair judges.

BY MS. WEYAND:

Q. You made no study of how many companies at that time provided? A. We may very well, but it didn't come to my attention. The impression I have from discussions is that we felt that most of our competitors did not have this.

Q. Would you name your competitors whom you thought did not have it? A. I would guess that we probably have 2,000 competitors, Ms. Weyand.

Westinghouse didn't have it. Sylvania, General Telephone and Electronics –

Q. You are talking about – A. AT&T, IT&T.

830 Q. You are talking about in '55 or to date?

A. '55 I think you were mentioning.

Q. Yes. A. All right.

Q. Could you name your five largest competitors?
A. Well, Westinghouse is certainly in there, Western Electric perhaps. No, I guess they are not top.

United Aircraft, jet engines.

Sylvania.

THE COURT: Why don't you suggest them, if you know.

MS. WEYAND: I don't know which he regards as the largest, I am sorry to say.

THE WITNESS: Sylvania, which is a part of General Telephone and Electronics. Westinghouse, GT&E, United Aircraft, RCA, Allis-Chalmers.

BY MS. WEYAND:

Q. What? A. Allis-Chalmers.

Is that five?

Q. I am not going – I am going to, since we are putting in additional exhibits, I am going to ask to –

THE COURT: Well, you are putting in additional
831 exhibits if there are no objections.

MS. WEYAND: I am going to offer additional exhibits.

I have obtained from the United States Department of Labor, Bureau of Labor Statistics, a digest of health and insurance plans, 1971 edition, in the form of a separate sheet for each company. It gives their sickness and accident plan and indicates whether or not they give sickness and accident benefits for disabilities arising from pregnancy and indicates that they give the number of weeks for which they give.

I am going to have that – I would like to have it – it appears in volume two. It is a three-volume loose-leaf service and the volume two is composed of the list of the major companies in the United States and a very, very substantial number of them, 54 of them do give six weeks and two give full pay.

Five give eight weeks and two under the –

THE COURT: Miss Weyand, I don't think it is fair for you to tell me what is in there.

MS. WEYAND: I wanted to tell you what I was offering it for. I will have it marked.

I would like to have the sheets which contain, I have the companies that give it, marked as plaintiffs' next,
832 Plaintiffs' Exhibit 121.

THE CLERK: 122.

MS. WEYAND: 122. Thank you.

THE COURT: All right. Mark it for identification.

(The document referred to was marked Plaintiffs' Exhibit Number 122 for Identification.)

MS. WEYAND: I will offer Plaintiffs' Exhibit 122 in evidence.

MR. KAMMHOLZ: We object, Your Honor, on the grounds that it is irrelevant. I think implicit in the offer, and certainly in the light of the testimony to date, the proposition that benefit plans provide larger benefits in one area and lesser in others, and for a comparison of this kind to have relevance, vis-a-vis the GE plan would require in-depth study of this area of coverage, the spectrum of coverage.

THE COURT: I am going to sustain it on the grounds, sustain the objection on the grounds that it was not filed before. It has been the Court's rule when ou don't file in your list of exhibits and there is any objection it cannot be accepted.

You may, of course, leave it for the record, and your
833 exceptoin is noted.

BY MS. WEYAND:

Q. Are you aware that Armour and Company provided eight weeks of sickness and accident benefits for maternity? A. No.

Q. Are you aware that –

THE COURT: I am sorry. I didn't hear the answer.

THE WITNESS: No.

BY MS. WEYAND:

Q. Were you aware Campbell Soup Company provided eight weeks sickness and accident benefits for maternity?

A. No. I have no information on that.

Q. Are you aware that Retail Clerks Local 689 provided full coverage? A. I am sorry. I am not aware of it.

Q. Swift and Company provided five weeks plus additional weeks for each year of service over six with a maximum of eight weeks? A. I have no knowledge.

THE COURT: Can we save time? Can you tell us of which companies, if any, that you have direct knowledge of, Mr. Hilbert? We might be here for three days.

834 THE WITNESS: I think all of the automobile companies pay six weeks maximum.

THE COURT: You have knowledge of the automobile companies?

THE WITNESS: Yes.

That was brought to our attention in 1955 by IUE.

THE COURT: Wouldn't that save time, Miss Weyand.

MS. WEYAND: I would like to ask him about RCA has six weeks. That is one of your competitors. That is one you named.

THE WITNESS: I didn't know that. No, I certainly don't know it now.

THE COURT: I am going to stop you, because it makes it very difficult for the Court. I am trying to separate counsel's statements from evidence. I have got to decide the case on evidence and your statements are not evidence.

MS. WEYAND: If you could take judicial notice of

this, because it is a publication of the Bureau of Labor Statistics, even if it is not in, I believe it may be taken –

THE COURT: All counsel, it could help the Court, if they bear in mind that I must decide it on evidence.

835 And evidence is what the witnesses say, not what counsel suggests in their questions.

You are not the only guilty party.

MS. WEYAND: I believe, with due respect to Your Honor, that the matters of which the Court may take judicial notice are evidence equally.

THE COURT: I am not talking about judicial notice. I am talking about other matters.

MS. WEYAND: I wanted to mention a couple, ask him about a couple of others.

Did you know that Johnson & Johnson had eight weeks in maternity coverage?

THE WITNESS: No.

BY MS. WEYAND:

Q. Did you know that Penn Central Transportation had coverage for, full coverage, for six months?

A. No.

Q. Now, did you ever make a study of the arbitration awards to see whether arbiters had held that sickness and accident should cover, did cover, disabilities arising from pregnancy?

MR. KAMMHOLZ: Objection, Your Honor. Irrelevant. I see no basis.

836 THE COURT: I am sorry, I was distracted by what appeared to be backfiring out there. I didn't hear the question.

Would you mind repeating it?

MS. WEYAND: I asked the witness if he had made a study of the various arbitration decisions to determine if arbiters had ruled that the payment of sickness and acci-

dent benefits should be made in cases of disabilities arising from pregnancy?

MR. KAMMHOLZ: Objection as irrelevant.

THE COURT: I will overrule the objection to the question.

The question is, did he make a study. And I don't see anything objectionable about that.

Would you answer that yes or no, sir?

THE WITNESS: No special study, no.

THE COURT: No study.

BY MS. WEYAND:

Q. Were you aware that as early as 1951 an arbiter, Mr. Lesser, respected arbiter, had ruled that it constituted sex discrimination not to treat pregnancy in employment situations the same as any other medical situation?

MR. KAMMHOLZ: Objection. Irrelevant and immaterial.

837

THE COURT: Objection sustained.

MS. WEYAND: I submit to Your Honor that if there is going to be any contention of good faith reliance the fact that in the legal field there was an issue that existed on which people might take different positions and were taking different positions over the years, shows that there could not be good faith reliance on one side.

THE COURT: Wouldn't that cover it when the witness said he made no study?

MS. WEYAND: I asked if he was aware the legal issue then existing going back that far.

I think it is an appropriate question.

May I rephrase the question?

Were you aware that going back to 1951 there had been a legal issue as to whether or not sex discrimination was involved in the failure to treat pregnancy the same as other medical disabilities?

MR. KAMMHOLZ: Objection. Irrelevant. Calls for a conclusion, for a legal judgment.

THE COURT: Overruled. He ought to know.

Were you aware? That is the question.

THE WITNESS: Well, I would like to have, if possible, a definition of what is a legal issue.

838

THE COURT: Would you refine your question to that extent, what you mean by a legal issue? I have one view of it and Mr. Hilbert may have another.

BY MS. WEYAND:

Q. Well, were you aware that there were conflicting positions being taken by lawyers and arbiters with respect to whether or not it constituted sex discrimination to fail to treat absences due to pregnancy the same as absences due to other medical disabilities? A. Well, again may I ask sex discrimination in violation of what law?

Q. Sex discrimination in violation of a contract that provided there should not be sex discrimination. A. No. I was not aware of that. It had never come to my attention and the IUE had certainly never raised it.

Q. Now, the IUE, I believe, requested you, not in connection with this case, but in connection with bargaining, a list of all – requested GE a list of all complaints issued against you and all the charges against you before state and federal agencies because of race and sex discrimination and the company refused to provide them, is that not so? A. That is so. And we explained in a letter why.

839

Q. Would you care to state the explanation?

A. Yes.

We felt in large part that there are sections of Title 7 which require EEOC to keep confidental charges, names and so on during the investigative phase of the charges.

And we felt that we would be breaching the spirit of

that section if we were to disclose that sort of material to the IUE, and we stated that in a letter that we sent to you, and we received, to my recollection we received no response from the IUE to our letter refusing to, explaining why we did not give that information.

Q. Do you know how many such charges you have pending against you? A. Relating to all aspects of discrimination?

I am trying to recollect our latest report.

My guess would be about 200. I don't have the report with me, though. I wish I wouldn't be held to that.

Q. How many cases do you have pending against you that EEOC has filed? A. One.

Q. Lynchburg, Virginia? A. That's right.

840 Q. How many cases do you have pending against you by the Department of Labor filed under the Equal Pay Act? A. One.

Q. *Hobson v. GE* in the Northern District of Ohio? A. That's right.

Of course that case, you recall, involved a correction that was made many years ago of a claim of Equal Pay violation.

And the point of the lawsuit now is that at that point in time the company with IUE agreement red circled certain men's rights and the Labor Department is saying yes, you corrected the Equal Pay violation back in the '50's, if there existed one, but you should not have, with the agreement of the union, red circled those men.

I consider it a technical case and, of course, it has not yet been –

Q. Does not the complaint allege that as of the time the complaint was filed in June of 1972 that there are males receiving pay for wire drawing jobs at a higher rate than women at that time were being paid for the same

wire drawing jobs? A. That's right.

MR. KAMMHOLZ: Your Honor, I object.

841 Your Honor, this, I suggest is irrelevant.

I gather that counsel for plaintiff here is counsel for plaintiff there and –

THE COURT: Fortunately I am not the judge there.

MR. KAMMHOLZ: I wanted to be sure we don't get a res judicata problem here.

THE COURT: Well, the witness has already answered it.

Yes, he answered, but I don't think it really helps me.

MS. WEYAND: His direct testimony, I believe, was that they had not ever been found to have violated.

THE COURT: That is why I let you.

MS. WEYAND: I think I should –

THE COURT: Well, I think –

MS. WEYAND: And –

THE WITNESS: This is just a complaint filed.

THE COURT: I said, a complaint is not a finding.

THE WITNESS: Oh, I am sorry, Your Honor. Yes.

BY MS. WEYAND:

Q. You have settled with very substantial payments

842 two sex discrimination cases within the last 18 months, have you not? A. We have in ongoing procedures. We are constantly making changes in wage rates at various plants and we have agreed on changes in rates in at least one plant over this period.

Q. You have settled with a settlement approximating 300,000 in back pay and 250,000 in increases a suit known as *Burry v. GE* in the United States District Court in Indiana, have you, an Equal Pay case? A. Yes. This was a settlement without any finding or admission of violation of law.

Q. But you did give the women, some women, $200,000 in back pay and raised their wages $250,000 a year

when they claimed that they had been paid less than men who did equal work? A. Certain women, yes.

Q. You also had a sex discrimination case against you known as *Allen v. GE* which you settled by hiring every woman involved, giving her a pre-hire seniority date and full back pay to the date of which she filed her EEOC complaint, did you not? A. I don't recall that case.

What plant?

843 Q. That is the pipe case in Tyler, Texas. A. This was an EEOC charge, right?

Q. Yes, Title 7 case. A. Yes, well again –

THE COURT: Before Judge Justice?

MS. WEYNAD: What?

THE COURT: Wasn't it before Judge Justice?

MS. WEYAND: It was settled before a decision by the judge.

THE COURT: I say, it was pending before Judge Justice?

MS. WEYAND: I believe so, yes.

THE WITNESS: That case was settled with no admission of any kind of violation of law.

BY MS. WEYAND:

Q. But you did hire all the women with a prehire seniority date, gave them back pay to the date they applied for their job, did you not? A. Well, I am not – I don't recall right now the details of the settlement. I think there was a very limited amount of back pay, but I don't recall the specifics.

Q. And they were hired with a pre-hire seniority date, were they not? A. Yes.

844 Q. And the ones that were hired were given back pay to the date they were hired, were they not? A. That is the part I am not sure about.

Q. There was back pay, you recall? A. I think

there was a very limited amount of back pay.

Q. The IUE had made an effort over the years and made an effort in 1969, '70, again in '73 to persuade the company that it should submit to arbitration grievances involving a violation of a clause against discrimination because of sex and race, has the IUE not? A. That's right.

Q. The IUE has also asked the company to agree to to arbitration grievances arising over the denial of payments for sickness and accident benefits, has it not? A. That's right.

Q. And the company refused? A. Well, that's right. Generally speaking all our benefit plans are exempt from mandatory arbitration, so the IUE has never made a specific request that S and A claims be made arbitrable. They have made requests that benefit plans generally –

Q. All denial of claims? A. Right.

845 Q. So under the malingering issue, if the company claims that a woman is not properly entitled to a claim she files a grievance under the contract, she has no further recourse if the company denies the claim, does she? A. Yes.

She has two forms of recourse.

One would be a suit on the contract.

Q. Go to court and sue on the contract? A. Yes.

And the union has done this on behalf of employees.

Secondly, the union can process a grievance, such as the grievance here involved, and once they have been processed through three steps of the grievance procedure the union can then strike in support of that grievance.

So there are the two forms of pressure or relief, if you want to call it that, that the employee has available through his or her union.

Q. The company has a very effective control over

malingering, does it not, if in order to recover the woman has to hire a lawyer and go to court and prove she didn't malinger? A. Well, I don't like the word

846 "malingering" because when I spoke earlier of the normal temptation of a mother to be or a mother who has delivered to want to stretch the period of her absence, I was not thinking in terms of what to my mind, at least, is malingering.

To my mind a malingerer is somebody who is lazy, who wants to either avoid duties when he is at work or avoid work when he can.

And the problems that I have been speaking of are really problems of employee relations. The kind of problems that will come up, we feel, when a woman says to her doctor, "I don't want to work in the plant more than five months, six months, seven months while I am pregnant. My mother had a baby that was stillborn because she felt that she was working too hard or straining, or something hit her." And the temptation of the woman after the birth is to want to stay with the child out of natural love and affection, perhaps out of concern for the child's health or psychological state. So I don't like to use the word "malingering."

But I do foresee, I think we in the company foresee, that in the context of that kind of situation doctors, in my opinion, generally are going to go along with the employee, with the mother, with the patient.

847 And there are going to be conflicts. There are going to be arguments. There is going to be discontent, frustration, and possibly really a lowering of employee morale.

Q. If the company were to grant sickness and accident benefits for the period an employee was disabled, that would not require any change in the right of the company to grant a leave to any employee who wished

to go off on a personal leave of absence for the period preceding pregnancy without pay, would it? A. Well, I think this is where you get to the rub.

The question, I think, the employee, I think quite naturally would like to get pay as one of the doctors said here the other day, he has yet to see anybody turn down money. So I think this is where the employee friction, the grievance problem, would arise.

Q. Today the employer does not give a leave of absence when a woman wants to go on pregnancy. On other leaves of absence, if you get – if you had a pulmonary embolism within 31 days you would get pay, but instead of putting a woman on leave of absence it is your benefit policy not to treat pregnancy leave as a leave of absence, is it? A. Well, it is an absence.

848 Q. Your benefit bulletin says it is not to be treated as a leave of absence, it is not a personal leave of – A. I don't think that we should get caught on semantics here. It is an absence from work without pay.

Q. But it does not constitute a leave, as you admitted, for the 31-day provision? A. It does not. Weekly S and A coverage ends when she goes out, that's right.

Q. But if she goes on any other kind of personal leave of absence S and A continues for 31 days, does if not? A. That's right.

Q. That would not make it like other leaves of absence, would not constitute any more confrontation, would it? In fact it constitutes less to make her go out without anything, doesn't it, without even a leave of absence? A. It seems to me if we are talking about the payment of weekly S and A benefits when she goes out, her natural desire and temptation is to go out with those benefits being paid to her.

Q. That about the woman who –

THE COURT: Before you get away from that, let me
849 be sure that I have that straight now.

Talking about semantics. What is a leave of absence? Forget females. What happens when a male gets a leave of absence? He goes off without pay?

THE WITNESS: Yes, sir.

THE COURT: But for a certain period of time he is covered under the policy so that if he becomes ill he gets benefits, is that correct?

THE WITNESS: Yes, sir.

Well, yes, if he becomes ill within 31 days, right.

THE COURT: Now, if a female asks for a leave of absence because of pregnancy, she doesn't get it; is that correct? She is told you can't have it?

THE WITNESS: Well, she is permitted to be absent and notation formally is "absence – pregnancy," some word like that. Sometimes may even say, "leave of absence."

THE COURT: So she is not covered for any benefits she would have if she were not pregnant and just took a leave of absence?

THE WITNESS: Yes. That is correct.

THE COURT: So a male who voluntarily wants to take a little vacation, gets a leave of absence, I don't
850 know whether that is grounds for a leave of absence, do you have to have a special ground for leave of absence?

THE WITNESS: Well, a vacation is a matter of right to the employee.

THE COURT: Well, let's forget that grounds.

What grounds do you have to have?

THE WITNESS: Well to work for a union, let's say he wants a leave of absence to work for the union.

THE COURT: You don't give everybody who asks for it a leave of absence, I take it?

THE WITNESS: Not necessarily, but if the request is reasonable, if an employee wants to take six months off to go to college or take courses, that leave is granted for that purpose normally.

Now, if he did that every year I think there would be a point in time at which the leave would be denied. It is discretionary, of course.

THE COURT: But it is a voluatary thing, isn't it?

THE WITNESS: Take a leave of absence, yes, sir.

THE COURT: A fellow does it on his own?

THE WITNESS: Yes, sir.

THE COURT: He gets certain benefits for a period of
851 time?

THE WITNESS: He is covered by weekly S and A for 31 days.

THE COURT: The lady that voluntarily gets pregnant, as you suggested happens in most of the case, why she doesn't – she takes a leave and doesn't get any?

THE WITNESS: She is not covered by S and A from the time she goes on absence.

THE COURT: I want to be sure you and I are not dealing in semantics. She doesn't get any benefits, does she, any more than the fellow that goes off to college doesn't get any other except for the S and A?

THE WITNESS: He gets coverage, not benefits. Is that understood? You said benefits.

THE COURT: He gets coverage and she doesn't?

THE WITNESS: Right.

THE COURT: Do you consider coverage a benefit? I bet you do when you talk to the union.

THE WITNESS: Yes.

THE COURT: I suggest you do when you talk to the

union and I guess it is.

THE WITNESS: Coverage is a benefit, I would have to agree.

THE COURT: So to that extent there is a difference,
852 even though they are both voluntary acts?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MS. WEYAND:

Q. I would like to have you look at Defendant's Exhibit 7, page two, if you would.

Would the marshal, please, show it to you?

Under the paragraph numbered two on the second page – A. Yes.

Q. Would you read the next to the last sentence out loud? A. Next to the last?

Q. Read the – well, why don't you read the whole paragraph out loud? I think it is inconsistent with something you said and I would like to have you straighten it out. A. "The pregnant employee may elect to voluntarily discontinue working, and have her status designated as 'illness – pregnancy' which is treated the same as an absence due to illness for continuity of service purposes. During this period the employee will be covered by current rules and benefit plan provisions relating to such pregnancy absence. The employee will be expected to return to work within eight weeks following culmina-
853 tion of pregnancy, unless she presents evidence that she is unable to return due to illness or complications from pregnancy. In this instance, illness absence would thereafter become the reason for absence on employment and payroll records. If the child's condition necessitates the employee's continued presence at home, her service may be protected beyond eight weeks after termination of pregnancy only if a leave of absence is granted for

such purpose."

Q. And this is the way they are entered on the books, is that correct, illness – absence? A. Well, this again is a headquarters statement. It is a health bulletin sent to the field. I don't want you to understand that the field copies this in their handbooks. They paraphrase it. They may have minor changes here or there.

Q. You do not exercise uniformity of control for the national office on this subject, is that correct? A. That is basically right. It is uniformity of recommendation, but not of control.

Q. And the same is true about whether there is a requirement in a plant that the employee go off at the end of six months, that is subject to the local plant management control? A. Well, no. I would say that to the
854 extent we find out or hear or know that any plant has a fixed rule to that effect we would exercise control to that extent, but we would not insist on repetition in a handbook or in local rules of paragraph two.

There is in evidence here a Murfreesboro, January 1973, notice on the front page of the bulletin, employees are required, pregnant employees are required to cease work at six months. You are acquainted with that bulletin? A. Yes.

Q. It was issued by Murfreesboro in January, 1973? A. Yes. And as you know, we corrected it as soon as we found –

Q. As soon as we introduced it and asked you to stipulate about it you sent another bulletin out? A. Murfreesboro did.

Q. Yes. A. Okay.

Q. Do you take any steps to find out if – made any survey to keep track of what the local management does about this subject? How does Murfreesboro happen like

that? A. Well, in this area as distinguished, let's say
855 from a company-wide benefit plan where the plan is mandatory on everybody in the company, in the area of personnel practices we don't exercise the same degree of uniformity of control.

In this respect many of our plants conform to local area practices. Many such areas, I assume from having seen some of the documents in the past, maybe still follow what is called a conservative medical advice. And I think that is where some of these plants have adopted some of these rules, but we think we have got them all corrected.

Q. Any survey to find out that you have? A. Yes. We have had our consultants in employee relations check their locations.

We have four consultants and they have been asked to check all locations to see that everybody is in line.

Q. Have they completed checking them yet?

A. Well, I haven't had a report back. I assume if they found anything negative that I would hear.

Q. You assume you would, but you haven't heard?

A. I haven't.

Q. You don't know whether it is completed as yet?
856 It is going on at the present time? A. Well, I don't know. I would assume it is completed. It was started sometime back.

Q. Did you make any study as to whether the fact that you gave a bonus in, for the baby on the anniversary date, what was that – A. 75th.

Q. That is of your predecessor company, isn't it? GE was incorporated in 1892, was it not? A. I will have to subtract 75 years from 1963.

1878, I think. Yes, that's right.

Q. First annual report is 1892 and a lot of the litera-

ture, it was your predecessor company, was it not, on the 75th? You don't remember? A. It was bad enough going back to 1940 and now we are going to 1878?

Q. Do you know whether the fact that there were these large number of babies on that one day had any distortion in the long run, I mean with the five years before and five years after, affected by the fact that you had babies on one day, or is this the – A. I don't know.

Q. You don't know the effect on the ten-year span at all? A. No. I don't know. I don't think we
857 made any study.

Q. You don't know at all?

THE COURT: I wonder if that public relations fellow who drafted that is still with the company.

THE WITNESS: No.

THE COURT: No.

THE WITNESS: Actually it was considered, though, a public relations success. It received attention in the paper, and I guess that is the purpose of public relations.

THE COURT: Sure

BY MS. WEYAND:

Q. You have a number of EEOC findings against you, do you not? Do you know how many times the EEOC has found you in violation as to sex and race combined?

A. I don't have any specifics. I would say that the ratio of EEOC findings we have in the cases we have had runs about three to one in our favor, that is, of no violation.

Q. And they found against you in Cleveland Wire Plant, the charge of failure to promote and Equal Pay, did they not? A. Well, Equal Pay would not be and EEOC consideration.

858 Q. They made a finding, the red circling situation

which existed violates Title 7, doesn't it? Anything that violates Equal Pay also violates Title 7, does it not?
A. I think that remains to be decided. I think that is an open question.

Q. Anything that violates Equal Pay Act may not violate Title 7, or the other way around, might be an open question, isn't it?

MR. KAMMHOLZ: Argumentative.

THE COURT: Yes. Objection sustained.

MS. WEYAND: I was very surprised, because I didn't know anybody had a question on that one.

MR. KAMMHOLZ: Still argumentative.

MS. WEYAND: I am sorry.

THE COURT: And gratuitous.

BY MS. WEYAND:

Q. Do you have a finding against you in Waynesboro?
A. I don't recall that specifically, no.

Q. Came out in the last two weeks. You are not acquainted? A. Nope. Haven't seen it.

Q. Coshocton? A. Coshocton? No.

859 Q. Bucyrus? A. I don't recall the Bucyrus one either.

Q. Philadelphia? A. Yes. That is race.

Q. I am asking both race and sex on these.

You have a suit pending or against you pending for some time in Philadelphia, do you not, on race?
A. On race, yes.

Q. Are you acquainted with a medical study that shows that women have a higher exercise coefficient during the period of the 24th to 36th week of pregnancy than either non-pregnant women or women during earlier stages of pregnancy? A. Higher what? I am sorry.

Q. Exercise coeffiient? A. No.

Q. Have you ever investigated what the medical findings are? A. No. I haven't.

Q. Do you have any study which shows that employees have objected to having a pregnant employee work with them in incentive groups? A. I don't have

860 specific indications, no.

I have never seen a particular grievance on it. I think I entered into that discussion on the basis of my general experience with the company and with other companies while I was in a law firm in terms of employee attitudes.

Q. What has been your experience about employee attitudes towards a pregnant woman in the plant?
A. Well, I would say ambivalent, some are protective, chivalrous, helpful, protective. I said that. Others, I think, are unhappy, frustrated, annoyed. Some others I would assume in any American group, whether a working group or elsewhere, would have probably some problems concerning matters of personal decorum.

Q. What facts do you have on which you base these statements? A. Just my impression of life in the GE Company.

Q. You have no specifics? A. As you know, we are a company that has many, many plants in different parts of the country. Some urban and some rural. Some even potentially suburban. All kinds of mores from A to Z.

Q. How much experience have you had in what plants and what years would lead you to this impression that

861 you have expressed here? A. Oh, I couldn't pick specifics. I review periodically grievance matters that our people bring to me. I get phone calls from our lawyers, from our employee relations people in the field. I have tried arbitration cases involving things like group incentive matters.

Q. Do you remember any phone call that reflected

an attitude about pregnancy from anyone? A. I would say not specifically, no.

Q. Do you remember any grievance that raised an attitude about pregnancy from anyone? A. No, not at this moment.

I would, I suppose if I looked back through the files I might find some.

Q. You don't know whether you would or not?
A. Well, I think I would, but I can't be sure.

Q. You never looked? A. I never looked, no, for this purpose.

Q. Do you have an impression as the attitude of management in the local plants in regard to the presence of a pregnant woman on the work staff? A. Again, GE managers like GE employees generally run the gamut. We have some very, let's call them liberal managers, and
862 we have some prudish managers. Generally speaking a company does not pick its managers in relation to their attitudes on this subject.

Q. Do you have any specific facts on which you would base a statement as to the attitude of management?
A. Well, just that I know the managers, at least a high percentage of them, and had conversations with them and you can't avoid getting some impression of a man's political, moral, even, in a sense, religious approach in those contexts.

Q. Ever had discussions with any of them about a pregnant employee in the plant? A. I can't recall anything specific.

Q. Wasn't it admittedly the company's position in negotiations in 1960 that it would not negotiate costs but only negotiate a level of benefits? A. Well, this has always been the company's preference, to negotiate level of benefits rather than specific cost elements. But costs,

of course, are a part of any employer's considerations in the contesxt of the best use of corporate money for particular employee benefits.

Just as an example, if somebody said, "Well, we think a good benefit would be to give every employee a $100
863 gift on his birthday, his or her birthday, I am speaking for our benefits people, but I think I know how they feel, they would calculate the cost of that 300,000 people times $100, and they then evaluate the extent to which that would be A, in accord with current practice, industry practice; and B, whether generally speaking it would be a reasonable, rational, desirable expenditure of the money for that benefit.

In a sense it is, to use a Department of Defense phrase, it is trying to get the biggest bang for the buck.

Q. Is it not true that throughout the 1960 to 1963, 1966 and 1970 negotiations the company repeatedly stated to the union that they bargained only level of benefits and did not bargain costs? A. Which negotiations?

Q. '60, '63, '66, '69 and '70. A. Well, I would say that is not true of '69 and '70.

Q. That wasn't true of '69? Are you acquainted with Mr. Moore's statement? A. Generally.

Q. At the beginning of the opening he had a five-page statement he made that included that? A. I was there.
864 I don't remember the specifics of it.

Q. All right.

Will the marshal, please, show the witness Plaintiffs' Exhibit 42-C, Stipulated Exhibit 00.

Mr. Willis, who is referred to there, is the GE Employee Benefits Manager, is he not? A. Yes.

Q. And the Joe Swire at that time was the IUE expert on pensions and employee benefits? A. Yes.

Q. Would you have any reason to doubt the colloquy

there recited was not accurate? A. Well, I don't know what these are.

Q. That is the IUE version of minutes. A. IUE minutes?

Q. Yes. A. As I recall, these are taken by a man who is not a skilled reporter. They are really – so they are not verbatim, is that right?

Q. They are not verbatim. The GE are not verbatim either, their version of the minutes, yes. A. I agree.

And in that context I can't be sure.

865 Q. This was a recurrent refrain throughout the previous years, was it not? A. Well, again, as I have said, we prefer to bargain on level of benefits. We give the union quite a bit of cost information, both future information and information as the plants, on how they have operated.

We have found that in collective bargaining negotiations not only is such information – are we concerned that such information will get to our competitors, but also we find that discussions of costs, particularly predicted future costs, involve us in arguments that prescind from, detract from the arguments, whether the benefits in question are good ones for the employees, are in line with what other industry – other companies are doing.

Q. Again, it was no question that you had that kind of a refrain throughout '63 and '66 whenever the issue came up, you would say bargaining benefits we don't bargain costs? A. We prefer to bargain level of benefits.

Q. And you told that to the union repeatedly?
A. Yes.

Q. And 1973 is the first year you departed from that refrain, is it not? A. Well, no. In 1969 I would say

866 that we gave a large amount of cost information that the union requested.

Q. The cost information was requested by the union as cost information? A. Yes. And we were willing to give it to them.

Q. I would like the marshal to find Stipulated Exhibit MM, if he would, the stipulation that is a speech by Mr. Moore at the beginning of negotiations.

I would like the witness to look at this exhibit and see if that is not the speech Mr. Moore made on the date there shown? A. This is 1966.

Q. I am sorry. A. Is this what you said?

Q. That is – there is no question that speech was made in '66? A. Yes.

Q. Yes, there is no question.

Did you participate in the 1969 negotiations?
A. Yes.

Q. And you are not aware that the refrain was still used at that time? A. Well, again, we still preferred to bargain level of benefits, but at the union's insistence

867 we gave cost figures.

Q. You gave cost figures ever since the decision came down in '69 that said you had to? A. No, that didn't enter into it.

Q. Okay. Okay. Thank you.

In addition to cosmetic or elective cosmetic surgery you also pay for other elective surgery, do you not?
A. Well, could you refine that?

Q. Someone had a trick knee and wanted to play or participate in athletics and elected to have a repair on his knee? A. Yes. That would either be a sickness or the result of an accident.

Q. Or sickness, accident, however his knee got in a trick condition? A. Right.

Q. No matter if it was years ago and he elected to have it fixed up, you would pay sickness and accident

benefits? A. Yes.

Q. Do you ever have occasion where you require a male, I think it is good policy for a male to go off, for
868 people to go off for a period of resting up for an operation for a pacemaker or elective surgery operation? Does the company concern itself whether that would be good, encourage the employee to take a period off before the operation? A. I am not familiar with that.

Q. You pay sickness and accident in instances of removal of benign tumors? A. Yes. If the doctor certifies that it is a sickness and the employee is disabled, then we will pay.

Q. Does the certificate ask anything about it being a sickness? A. The form itself?

Well, I should –

Q. It speaks for – you aren't purporting to make any different statement. He certifies it as a disease and they pay and whatever the form shows, okay? A. Well, it does indicate what the cause is.

We have some – we have the forms that the ladies filed in the Salem case. We could discuss them if you like.

Q. I believe that is all I have.

THE COURT: All right.

Any redirect?

869 MR. KAMMHOLZ: Very little, Your Honor.

THE COURT: All right.

MR. KAMMHOLZ: I should like only to clarify the witness' reference on cross-examination to an EEOC opinion of 1969.

Would you refer to it, please, Mr. Hilbert?

THE COURT: Do you have it? Has it been marked? Mr. Marshal, give it to the witness, please.

THE WITNESS: Oh, yes, I am sorry. Here it is.

THE COURT: Do you have a copy?

THE WITNESS: I have a copy.

THE COURT: You use your copy and then counsel can use his.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Will you state for the record, please, Mr. Hilbert, the EEOC decision number? A. Decision number 70-360, case number JAU9-026.

Q. Dated? A. December 16, 1969.

Q. And reported where in the Commerce Clearinghouse
870 Service? A. Commerce Clearinghouse Employment Practices Service at paragraph 6084.

MR. KAMMHOLZ: I have nothing further, Your Honor.

THE COURT: All right.

Any recross?

MS. WEYAND: No, Your Honor.

THE COURT: Help the witness down.

(The witness stood aside.)

* * * * *

THE COURT: Call your next witness, please.

MR. STRAUSS: Defendant calls Charles Duncan.

THE COURT: Come around, Mr. Duncan.

CHARLES DUNCAN was called as a witness by and on behalf of the defendant and, having been first duly sworn, was examined and testified on his oath as follows:

871 MS. WEYAND: I have a statement I would like to make at this point.

The EEOC in this case issued an order against another former employee of the EEOC who GE had subpoenaed as a witness. GE subpoenaed Mrs. Sonia Pressman Fuentes as a witness, and I have not pursued the full extent of the EEOC ruling. I was told by staff members that the

EEOC had issued an order under its regulations to Mrs. Fuentes not to testify, and Mr. Strauss told me he withdrew the subpoena.

The EEOC was in the process of sending me copies of the order, and I told them they didn't need to because I had no occasion for it.

I would like to defer the hearings of the testimony of Mr. Duncan until I can check with the EEOC.

They had told me in that connection they had a regulation against a former employee testifying as to internal matters that went on. I would like to have an hour or so to call the EEOC and make some determination and perhaps to ask you to wait because they told me that had an order against the other employee.

THE COURT: I don't mind that except that assuming arguendo that they tell you they do, what does that have to do with this Court?

872 MS. WEYAND: We have a former General Counsel sitting in the witness box now and I don't know just what even what grounds to object on because I have not checked those regulations or what the scope is.

THE COURT: Assuming the regulations say he cannot testify, what effect do you think that would have on me? Considering the separation of powers, that is.

MS. WEYAND: Well, I think you are a very fair-minded judge and there may be arguments which can be presented that I had not prepared for because they withdrew them. I would like to check with the EEOC as to regulations and rulings before proceeding.

THE COURT: I will permit you to do that. I suggest to you, you best have some authority if you wish to persuade the Court to say Mr. Duncan is not qualified to testify.

I am not impressed with the fact that somebody in

Washington says he is not supposed to, at the moment.

Like you say, I am a fair-minded judge and I will listen.

Would you mind, I will give you a very leisurely lunch, if you acquiesce in the slight delay so Ms. Weyand –

873 MR. STRAUSS: I prefer to go ahead, Your Honor.

The reason is that, as Mr. Duncan would state – well, first I would like to correct an error of fact here, and that is this.

The defendant never served a subpoena on Miss Fuentes.

THE COURT: I was about to – I was going to make inquiry at a later date if you had authority to cancel a subpoena from the Court.

MR. STRAUSS: We requested one. It was never served.

Now, Ms. Weyand is right. Mr. Duncan, as will develop, is former General Counsel of the EEOC.

I have asked – well, the testimony that he had on a conversation within the last several weeks, I believe, with the Associate General Counsel of the EEOC –

THE COURT: May I interrupt you? These are matters perhaps, if you gave them to counsel then –

MR. STRAUSS: We were given –

THE COURT: She may withdraw her objection.

But can you tell me why I ought not to accord the courtesy of an hour and a half or an hour and 15 minutes for lunch now?

874 MR. STRAUSS: Yes. I will tell you. In a nub, I am sure Your Honor is familiar with the Marchetti case in the Fourth Circuit and I am sure that your views that you have expressed on the bench just now reflects that opinion. I think it would be futile.

THE COURT: All right.

MR. STRAUSS: That is my reason.

THE COURT: All right.

Step down, Mr. Duncan.

(The witness stood aside.)

THE COURT: I am just not going to let a simple courtesy interfere with you. And I don't want to be tagged as what we may be tagged as anyway, Mr. Strauss.

MR. STRAUSS: No. No, I was most interested in –

THE COURT: I will protect you if you protect me.

MR. STRAUSS: I will certainly be delighted to. Thank you for protecting me.

THE COURT: Hopefully the emergency that is supposed to be heard at two o'clock will not take too long.

I will recess court until 2:15 with the proviso I will do my very best to get right back on this case.

875 Now, may I suggest that you don't have to move your papers, you may be assured they will be safe, but would you push them up a little bit and give room for the counsel that are coming in on this other matter.

Mr. Duncan, I will ask you to return at 2:15. I am sorry, sir. The delay will be until at least two o'clock.

(A recess was taken at 12:45 to reconvene at 2:30.)

THE COURT: I apologize for the delay.

All right, Mr. Duncan, do you want to try again?

(The witness resumed the stand.)

THE COURT: Are there any motions?

All right, you may examine.

Excuse me. There are?

MS. WEYAND: Yes.

THE COURT: You may proceed.

MS. WEYAND: I called the EEOC and spoke to attorneys on its staff who have been concerned with Mr. Duncan's testimony in other cases. They told me that Mr. Duncan testified under oath yesterday that he resigned and left the EEOC on the date of October 31,

1966, which precedes the date of the only two exhibits

876 which are offered here by the defendant as purported opinions. They are Exhibit 12, which purported to be dated November 15, 1966, and a letter dated November 10, 1966, both after the date which Mr. Duncan admittedly ceased to be the General Counsel of the EEOC.

They therefore felt there was no need for any order because they could not see how any Court could admit his testimony in any matter relevant in this case as I told them this was the only letter that was offered in evidence.

MR. STRAUSS: Shall I respond, Your Honor?

THE COURT: If you will give me a moment I will try to digest the last gratuitous statement from the EEOC to the effect of what a Court might or might not do, could or could not do.

Is there something further?

MS. WEYAND: Yes. I will say that if he does testify I would like to call a witness offered by the EEOC who will give further facts in reference to Mr. Duncan's activities as a witness.

THE COURT: Well, I take it that there really isn't any objection before me except as to the relevancy of Mr. Duncan's testimony, anticipated testimony, is that

877 correct, ma'am?

MS. WEYAND: I think it would be perfectly proper to let him be called as a witness and questions put and I will object at that time.

THE COURT: I mean that is, so we get the procedural aspect straight, that is the posture?

MS. WEYAND: Yes.

THE COURT: All right.

So there isn't any objection at this moment. You may examine.

MR. STRAUSS: Thank you, sir.

DIRECT EXAMINATION

BY MR. STRAUSS:

Q. Would you state your name and residence address, sir? A. Charles T. Duncan, D-u-n-c-a-n, 1812 Upshur, U-p-s-h-u-r Street, NW, Washington, D.C.

Q. Mr. Duncan, what is your occupation or profession? A. I am an attorney at law admitted to practice in the District of Columbia.

Q. Private practice? A. Yes.

Q. How long have you been so engaged? A. Since

878 May of 1970.

Q. Of the bars of what jurisdictions are you a member, sir? A. In addition to the District of Columbia, the State of New York and State of Maryland.

Q. Are you an officer of the District of Columbia Bar? A. Yes. We have a unified D.C. Bar and I am this year President of that organization.

Q. Now, prior to your becoming engaged in the private practice of law in the District of Columbia were you employed in an official capacity by the District of Columbia Government? A. Yes. I was Corporation Counsel for the District of Columbia.

Q. And what were your duties and responsibilities as such Corporation Counsel? A. In general I was responsible for the legal affairs of the District of Columbia, to represent the District in all court proceedings, and to give legal advice to District officers and employees.

Q. When did you – when did your function as Corporation Counsel terminate, sir? A. It terminated sometime in May of 1970. I am not sure of the exact

879 year – date.

Q. You were, were you not, at one time, employed by the EEOC? A. Yes, I was.

Q. And in what capacity were you so employed?

A. I was General Counsel of the Equal Employment Opportunity Commission.

Q. And would you pinpoint the dates? A. I believe I became General Counsel on August 8, 1965, and I took the oath of office as Corporation Counsel on October 31, 1966.

I assume I went off the EEOC payroll on that date, but I am not sure.

Q. You just don't remember, but in view – A. It was sometime very late in October.

Q. In October, 1966? A. That is correct.

MS. WEYAND: May I object and ask that he clarify that it is to be clear that you left the EEOC prior to October 31, 1966?

THE COURT: Ms. Weyand, I will ask you to wait until you get a chance.

MS. WEYAND: It was ambiguous. I wanted it on voir dire before he goes further.

880 MR. STRAUSS: May I proceed, sir?

BY MR. STRAUSS:

Q. Mr. Duncan, as General Counsel of the EEOC, briefly would you state what your duties and responsibilities were? A. In general to interpret Title 7 of the Civil Rights Act of 1964 to the Commission and to members of the public who made inquiries of the Commission.

Q. And your office as General Counsel was where?

A. Located in Washington, D.C.

Q. Headquarters of the EEOC, is that right?

A. Yes. Yes.

THE COURT: Let the record show now what you have handed to the witness.

MR. STRAUSS: Yes.

Mr. Duncan, I show you Defendant's Exhibit Number 12 and I ask you to explain what those letters are.

MS. WEYAND: I object to any testimony by Mr. Duncan with respect to these letters because, as I understand his testimony, he ceased to be the General Counsel of the EEOC prior to the date of these letters.

As I understand, you became Corporation – he became Corporation Counsel October 31 and ceased to be employed by the EEOC prior to that date.

881 THE COURT: All right.

I am going to overrule the objection on the grounds that you have just stated.

I don't think an appropriate foundation has been laid to whatever questions you are going to ask from this point on, Mr. Strauss.

Suppose you find out if he is familiar with them.

Did he write them?

BY MR. STRAUSS:

Q. Mr. Duncan, the letters which represent the Defendant's Exhibit Number 12, are you the author of the letters? A. Well, let me respond this way. These letters were prepared in my office. As to whether I drafted particular language, I don't remember that, but I do recognize the two letters as being letters which were prepared in my office or certainly similar to letters which were prepared in my office.

Q. Now, the dates that appear on the letters are November 12, November 15, pardon me, and November 10.

A. That is correct.

Q. Now, those dates are in fact ones which were subsequent to your leaving the Commission, is that right?

882 A. That is correct.

Q. Can you explain that? A. I recall that at this point in the life of the Commission letters would very frequently be written, and by the time they were subjected to various review processes two weeks, three weeks, a

month, as long as six weeks might pass between the date of the writing of the letter and its actual mailing.

I know further that at one point letters were dated when they were typed. Because of the situation I have just described, that procedure was changed and letters were dated when in fact they went out, either by typewriter or by a date stamp.

Q. So that these letters may very well have been authorized and prepared under your supervision before you left the Commission?

MS. WEYAND: I object. There is no testimony they may have been. It is a purely theoretical and conjecture and I think that is an improper question. I object to it.

THE COURT: Objection is overruled.

THE WITNESS: I will go further and say they may have been, Mr. Strauss. I recognize these letters, not necessarily the particular document itself, but I certainly

883 recognize this style and I particularly recognize the content of the letter as being matters which were authorized by me and by the Commission before October 31, '66.

MS. WEYAND: I ask the matter be stricken to say they were authorized by the Commission when there is obvious evidence that he does not know whether these letters were similar to or worded in the way they were. His testimony indicates that, and I ask it be stricken, that they were authorized before.

THE COURT: I am afraid, ma'am, that I will have to be the judge as to what is - as to what his testimony means.

Your objection is overruled.

BY MR. STRAUSS:

Q. Is it a fair statement to say, sir, that letters containing similar opinions to those expressed therein were sent out by you before you left the Commission in re-

sponse to inquires made of the Commission? A. Yes.

MS. WEYAND: I object to this question.

The best evidence of what is sent out were the actual letters, and in the absence of actual letters I believe it is irrelevant and immaterial that letters similar to this were

884 sent out.

THE COURT: Objection overruled.

BY MR. STRAUSS:

Q. Mr. Duncan, before written opinions – let me strike that.

What was the practice of the Commission while you were General Counsel as to prior discussions within the Commission with respect to opinions similar to those opinions expressed therein?

MS. WEYAND: I object to any testimony as to what the method of operation and internal affairs of the EEOC were. I believe this is improper testimony in court.

The operations of an agency are shown by its guidelines and its decisions, and it is improper to have the testimony as to what went on in the agency.

THE COURT: Unfortunately operations don't always conform to the guidelines.

In any event the objection is overruled.

May we have it understood that you have a continuing objection, Ms. Weyand, to keep you from having to get up? And I will accept, after the witness has been excused, whatever reasons you wish to assign as reasons to protect yourself on appeal.

885 I can hardly rule on the relevancy of somebody's testimony until I know what they are going to testify to.

Now, if we had a jury here I would send the jury out and I would have the witness answer whatever questions were propounded and I would let you cross-examine. Then I would rule on it.

But we don't have a jury. The only way I can rule on the relevancy of the matters is to know what they are.

I don't know yet.

I am not fussing with you, ma'am. I want you to do your job, but we might save some time if we have it understood that you are very unhappy about his testifying to anything on the ground that it is irrelevant, immaterial, foundation has not been laid. If you can think of anything else –

MS. WEYAND: Not the best evidence.

THE COURT: Not the best evidence.

MS. WEYAND: Not the proper evidence as to what the results of any agency are.

THE COURT: All right.

MS. WEYAND: The only way you look at an agency is its decision and there is no right of any Court to look

886 to anything but the decisions or the guidelines of an agency. On the statute it provides that only opinion letters or interpretations can be relied on by a corporation and these must conform to certain standards.

THE COURT: What makes you think I am going to rely on any of it, Ms. Weyand? I don't know yet.

MS. WEYAND: I am sorry, Your Honor.

I was talking about the good faith reliance of the defendant, which was the issue in that regard.

THE COURT: Oh, you mean the defendants.

All right.

I think we have covered any and all of the possible reasons for objecting. If there are any more, let's put them in the record later.

MS. WEYAND: Thank you, Your Honor.

THE COURT: Thank you, ma'am.

You may go ahead.

MR. STRAUSS: May I ask the reporter to, please, read

the last question and the witness' last answer, please?

THE COURT: Assuming he can find it.

(The reporter read the question and answer referred to.)

THE WITNESS: In 1966 during the year plus that I
887 was there, and because of Title 7 was new, the Commission received literally hundreds of letters addressed either to the Commission, to individual Commissioners, or to my office requesting interpretations of various provisions of Title 7.

To the extent that legal interpretations were requested the inquiries were routinely routed to the Office of the General Counsel for the preparation of a reply.

At my discretion some letters would be answered directly and others would be cleared with the Commission itself.

BY MR. STRAUSS:

Q. Do you recall whether letters setting forth opinions such as those set forth in Defendant's Exhibit 12 were discussed at any time with the Commission? A. You mean on the specific point of pregnancy? Maternity leave?

Q. The matters discussed and set forth in those letters? A. Yes.

This was one of the issues that I would not have decided on my own initiative, and indeed did not.

This particular question, how to treat pregnancy and
888 maternity leave, was particularly discussed at the Commission level and with senior staff in order to formulate the Commission's policy.

Q. What about the matter of the treatment of pregnancy disabilities under an employment – under an employer's disability plan? A. That subject was discussed at the Commission level.

Q. Do you recall who was present at those discussions?

A. I cannot pinpoint a discussion or a date. I do know that this question was considered by the full Commission, and I know who the Commissioners were.

Q. Now, do the letters, that is, do the letters which are in evidence as Defendant's Exhibit 12 reflect the policy of the EEOC during your incumbency as General Counsel with respect to the treatment of pregnancy disabilities under an employer disability benefit plan? A. Yes.

Q. That is, it reflects such policies at least until October, 1966, is that right? A. Yes.

You said during my incumbency, that is correct.

889 Q. Now, how thoroughly was this matter discussed within the Commission? A. I would have to answer you this way. The whole question of sex discrimination occupied a good deal of the Commission's attention during the first year.

Pregnancy, maternity leave was one aspect of the sex discrimination.

It was also one of the problems that I think baffled the Commission the most. So I would say that this aspect of sex discrimination certainly as well as the broader problem of other aspects of sex discrimination were thoroughly discussed by the Commission.

Q. When the Commission was considered in the formulation of these policies which are set forth in the exhibit, was there any consideration given to the legislative history of Title 7 with respect to sex discrimination? A. Unfortunately, Mr. Strauss, as I am sure you know, there is little or no legislative history of Title 7 insofar as sex discrimination was concerned.

We wished that there had been some, but as you know, the word was added to race, color, religion, et cetera, almost fortuitously and without any legislative history.

890 Q. But whatever legislative – but you did make an

inquiry into the question of whether there was explicit legislative history? A. Oh, indeed, because in interpreting Title 7 we relied heavily on the legislative history whenever it was available. I am saying in the instance of sex discrimination there wasn't any.

Q. Looking more closely, Mr. Duncan, at the exhibit, can you explain why the November 10 letter seems to quote language that appears in the November 15 letter and seems to reverse dates? A. Yes.

I am reasonably certain that the quoted language had been earlier developed and had become boiler plate by that time.

Many of the letters would ask essentially the same question, and once we had formulated a responsive answer we would just use the form as it were, and I think that the language quoted here had become boiler plate by that time.

Q. I wonder if you would – A. Excuse me. Boiler plate is an inelegant word.

THE COURT: Well, lawyer and judges know.

THE WITNESS: All right, sir.

891 BY MR. STRAUSS:

Q. And as an ex-government employee, if I might say on the record, I have used the term many times myself.

Would you look at the last sentence, please, in the November 15 letter? A. Yes.

Q. Would you explain, if you can, what the term "fringe benefits" means as used in that sentence?

A. Yes. Fringe benefits would include wage continuation, pay, pay in the nature of sick pay, hospitalization, any other benefit like that that applied in the case of absence due to other illnesses. But I think the chief thing was pay.

Q. Pay continuation, are you saying? A. Yes.

Q. During pregnancy? A. Yes. During the absence.

Q. Whether or not the pregnancy was covered by a disability policy, is that what this refers to? A. No. I am trying to say that it was the Commission's position that pregnancy could be treated differently from a medical illness and that it was not necessary to make the same provision in the case of pregnancy as was made in the case of medical illness, be it under company policy or under various sickness and health plans.

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Q. Now, would you look, please, at the November 10 letter, Mr. Duncan, and in particular to the last two paragraphs thereof? A. Yes.

Q. I note that there is a reference in there to an employee disability plan, benefit plan financed by both the employer and the employees.

Would the response set forth in the letter have been any different had the letter been concerned with a disability benefit plan sponsored by the employer alone?

A. No, clearly not. It was put that way because that is the way the question was put to us. It was our style to answer the question as asked. However the plan is financed, on a contributory basis or solely by the employer, the Commission's policy was that you did not have to provide the same benefits for maternity absence that you did for illness-caused absence.

Q. Mr. Duncan, would you state, if you can, what the policy may have been when you were General Counsel as to the publishing, the reproduction would be a better word, the reproduction of these letters in the reporting services? A. Yes. If you will notice on the Exhibit 12, both parts of it, the name of the addressee of the letter is not present.

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The reason for that was that we customarily, after a letter had been sent, would delete the name from – delete

the name of the addresse from the letter so that the letter could be made available to the reporting services without disclosing the identity of the addressee, to give a confidentiality.

Q. How did the reporting services acquire these? A. They were very interested in the activities of our office and would frequently come by to peruse recent opinions. They would come by more or less on a regular basis, particularly, I remember, the representative of BNA, Bureau of National Affairs, and we would make copies of the letters available to them.

It may have been at some point that we mailed the reporting services letters. I don't particularly remember that.

Q. Do you recall whether Commerce Clearinghouse, CCH, was a service that was interested? A. Yes, they were too.

Q. Can you state whether or not these letters which
894 are in evidence were or were not published? A. Were or were not published?

Q. Reproduced in the service, I should say. A. I have seen in connection with this testimony CCH, and I think BNA services, as they appear at that time, where the substance of these letters does appear, yes.

Q. Mr. Duncan, to get on with it, have you had occasion to read the guidelines on discrimination because of sex which were issued by the EEOC in 1972? A. Yes, I have.

Q. How recently was that? A. As recently as today.

Q. You are then familiar with the policies expressed in such guidelines, that is the 1972 guidelines, concerning the matter of disability insurance coverage and so-called pregnancy and childbirth disabilities? A. Yes.

Q. Now, in 1966 when the policy formulated in the

letter we have here was taking place, was there any discussion within the Commission of a policy such as appears in the 1972 guidelines? A. I would say yes, Mr. Strauss, to the best of my recollection.

As I indicated earlier, the Commission policy on this
895 point was extensively considered, various alternatives for treating this problem, how do you handle maternity leave, various alternatives were discussed.

One of the alternatives that was discussed was, necessarily, would have been to treat it as an illness-induced absence. So that was discussed, yes.

Q. And rejected? A. Well, the Commission's policy was as these letters state.

Q. So that this may be clear, may have been evident, but I presume then that when the so-called 1972 policy was discussed in connection with the 1966 formulation the presence or absence of legislative history was also discussed at the same time? A. I am sure it was. I don't specifically remember that.

MR. STRAUSS: I have no further questions.

THE COURT: All right.

Any cross-examination?

CROSS-EXAMINATION

BY MS. WEYAND:

Q. Were you shown these? Did you testify recently in a Delta Air Lines case? A. In Atlanta last Tuesday.

896 Q. Last Tuesday? A. Yes.

Q. That is day before yesterday? A. Yes.

Q. Were you shown these letters during that testimony? A. Yes, I was.

Q. When you were asked where did these letters come from you testified you did not know, is that correct? A. That is not correct.

Q. What did you testify? A. I testified that I had received the letters in Atlanta from an attorney in Washington, D.C.

Q. Now, what attorney did you have in mind?
A. Mr. Strauss.

Q. Received the letters form Mr. Strauss? A. Yes.

Q. You were asked, do you remember signing these letters, and you said no; is that correct? A. Would you repeat that?

Q. I understand you testified, do you remember signing these letters and you testified no? A. I believe I was asked if I remembered signing the letters and my answer to that was no.

897 Q. That you did not remember signing these letters?
A. These particular letters, that is correct.

Q. I believe you were asked, do you remember who the letters were addressed to and you answered no, is that correct? A. That is correct.

Q. And you were asked when did you leave the Commission and you testified October 31, 1966, is that correct? A. That is correct.

Well, no, again I testified, as I recall, that I commenced my new job on October 31, 1966, and I assumed that I went off the EEOC payroll on that day or within a few days thereof because I remember going directly from one job to the next without any hiatus.

Q. Is there any question that you were not on the payroll of the EEOC on November 10, 1966? A. No question whatsoever.

Q. You were not on the payroll? A. I was not on the payroll.

Q. Were you on the payroll – you were not on the payroll any subsequent dates? A. Nor at any subsequent date even as a consultant, that is correct.

898 Q. Have you testified in other cases besides the Delta Air Lines case? A. And this case, no. Only two.

Q. With respect to any activities? A. That is correct.

Q. As to being General Counsel.

Were you ever informed that there were retractions sent to employers with respect to certain of the letters issued after you left that bore your signature? A. No.

Q. You were never – you are not aware of anything like that? A. I am aware that the Commission changed its policy from time to time, as all Government agencies do. I don't think anyone ever specifically told me that any given letter, any given policy had – which I had signed, had been changed.

Q. And any letter which is sent out over your signature after you left the agency, there was no clarification as far as you know? A. No, I would assume that not very many letters went out over my signature after I left the agency. In fact I was surprised to notice the

899 dates of these.

Q. You don't know if these did go out over your signature, do you? A. No.

Q. You don't know if any company ever received them? A. These particular letters I cannot testify that any company ever received letters like this.

Q. You don't know about letters sent out by the EEOC? A. These two letters here? Letters like this carrying the same policy I do remember went out.

Q. But you would not remember the specific facts or what differences they might have – A. No.

Q. – in the wording? A. No, not at this time.

Q. Had you ever heard before that there were letters that went out, someone purported to have letters which went out over your signature at a date subsequent to

October 31, 1966? A. I am sorry, Ms. Weyand, would you repeat that? I didn't understand.

Q. Had you, prior to the time that Mr. Strauss showed
900 you these two letters, ever heard that there were copies of letters around which purported to have been signed by you which bore dates subsequent to October 31, 1966? A. No. Until I saw these two letters I was not aware that that was a problem.

Q. And you never heard that there were such letters sent out? A. I either never heard it or long since forgotten.

As I say, the question of letters going out over my name after I left really never became a question in my mind until I first talked to Mr. Strauss.

Q. As far as you know, all letters which bore your name were issued before October 31, 1966, is that correct? A. I can't say that.

I am sure that there were 10, 15, maybe as many as 40 letters lying around in various states of being processed on October 31. What was done, signed by me – whether they were retyped and signed by Mr. Berg or not I don't know.

Q. You don't know at all what happened after you left on October 31? A. No.

901 MS. WEYAND: That is all the questions I have.

THE COURT: Any redirect?

MR. STRAUSS: No, sir.

THE COURT: All right. Thank you.

Unless I hear an objection, Mr. Duncan will be excused. Thank you, sir.

(The witness stood aside.)

THE COURT: Call your next witness, please.

MR. BATTLE: Mr. Clerk, may I have the deposition of Dr. Wilbanks?

THE COURT: I really look forward to your smiling face.

MS. WEYAND: I didn't know whether you wanted a statement at this time, or briefed in writing later. I was uncertain how you left matters.

THE COURT: On this last? If you would just file any additional objections that you can think of, and any authorities you want, I will be glad to look at them.

MS. WEYAND: Thank you. I wanted to be sure there wasn't anything else called for from me at this time.

MR. BATTLE: If Your Honor please, you may recall
902 yesterday Mr. Strauss making a reference to a deposition that was taken of Dr. G.D. Wilbanks which had been marked as an exhibit in this case, and I think Your Honor –

THE COURT: Yes. I said I preferred it not be an exhibit.

MR. BATTLE: Yes, sir.

And I think that that is exactly correct and therefore I am at this time tendering the deposition of Dr. G.D. Wilbanks taken pursuant to Rule 30(b) on April 12, 1973, in Chicago, Illinois.

I ask that that depositon be received as part of the testimony in the case.

THE COURT: In toto?

MR. BATTLE: Yes, sir.

It was a de bene esse deposition, therefore I think it contains very little irrelevant material.

THE COURT: Were there any objections made?

MR. BATTLE: I don't recall that there were.

THE COURT: Do you recall, Ms. Weyand?

MS. WEYAND: There are no objections remaining to be ruled on.

I think there was one question put, I reput it in another form and I think it went through.

903 **CURRICULUM VITAE**

GEORGE DEWEY WILBANKS, JR.

BORN: February 24, 1931
Gainesville, Georgia

MARRIED: July 31, 1954 – Evelyn Freeman Rivers –
B.A. Wellesley, 1954
M.A. Duke University, 1956

CHILDREN: George Rivers – Born: May 21, 1958
Wayne Freeman – Born: October 18, 1960

EDUCATION:

High School: Riverside Military Academy, Gainesville, Georgia
H.B. Plant High School, Tampa, Florida
Graduated June 19, 1949

College: Duke University –A.B., June 1953
University of Florida – Summer, 1951

Medical School: Duke University School of Medicine – M.D., June 1956

Internship: Pennsylvania Hospital, Rotating, June 1956 – June 1957

Residency: OB-GYN, Duke Medical Center, July 1957 - June 1961
Fellow-OB-GYN Pathology – Boston Lying-In Hospital and Free Hospital for Women, January-June 1959

PROFESSIONAL EXPERIENCE:

Resident Instructor, Dept. OB-GYN, Duke Medical Center, July 1961 - June 6.

Clinical Instructor, Dept. OB-GYN, Univ. Oklahoma School of Medicine, March 1963 - June 1964

Associate, Dept. OB-GYN, Duke Medical Center, July 1964-June 1965.

Special Fellow, National Cancer Institute, Dept. OB-GYN & Pathology, College of Physicians & Surgeons, Columbia-Presbyterian Medical Center, New York City, July 1964 - July 1965

Assistant Professor, Dept. OB-GYN, Duke Medical Center, July 1965 - December, 1969

Associate Professor, Dept. OB-GYN, Duke Medical Center, Jan. - June, 1974

Director, Gynecologic Oncology Division, July 1967 - July 1970

Professor & Chairman, Dept. OB-GYN, Rush Medical College, Chicago, Illinois, July 1970 -

905 **HOSPITAL APPOINTMENTS:**

Chairman, Department of Obstetrics & Gynecology, Rush Presbyterian-St. Luke's Medical Center, Chicago, Illinois, July, 1970 -

MILITARY SERVICE:

Captain, USAF, Assistant Chief, OB-GYN Service, 2792 USAF Hospital Tinker Air Force Base, Oklahoma, July 1962 - June 1964

BOARD QUALIFICATION:

American Board of Obstetrics & Gynecology, Diplomat 1965
Florida Board of Medical Examiners, 1956
North Carolina Board of Medical Examiners, 1956
Illinois Board of Medical Examiners, 1970

SOCIETY MEMBERSHIPS:

American College of Obstetricians & Gynecologists, Fellow
American College of Surgeons (Fellow)
Society of Pelvic Surgeons

Society of Gynecologic Oncologists
American Association of Cancer Research
American Society of Clinical Oncology, Inc.
American Society for Cytology
Tissue Culture Association
American Association for Advancement of Science
American Society of Colposcopy and Colpomiscroscopy
Bayard Carter Society of Obstetricians & Gynecologists
Baker-Channing Society
Ex-Residents Association of Pennsylvania Hospital
International Society for Prevention of Cancer
American Medical Association

MISCELLANEOUS ACTIVITIES:

North Carolina Regional Medical Program - Duke Representative to Cancer Subcommittee, January 1967 - Sept. 1969

Director, Cancer Information Service, North Carolina Regional Medical Program, April 1968 - June 1970

Director, American Cancer Society, Durham County Unit, 1965 - 1968

RESEARCH INTERESTS:

Gynecologic Cancer
Clinical: The study of early neoplastic changes of the cervix, endometrium and ovary, with emphasis on pathogenesis, methods of early diagnosis and treatment.
Chemotherapy of gynecologic cancer.
Basic: Cell physiology as related to *in vitro* behavior of human genital cells, normal and malignant, and their relationships to each other, and in response to various agents, carcinogenic and chemotherapeutic. Chromosomes, DNA synthesis, and mitosis of these normal and malignant cells *in vitro.*

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4. Wilbanks, G.D., and Carter, B.:
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5. Klinges, K.G., Wilbanks, G.D., and Cole, G.R.:
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6. Wilbanks, G.D.:
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7. Richart, R.M., and Wilbanks, G.D.:
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8. Wilbanks, G.D., and Richart, R.M.:
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Cancer. 19: 273-276, 1966

9. Wilbanks, G.D., and Richart, R.M.:

The *In Vitro* Interaction of Intraepithelial Neoplasia, Normal Epithelium and Fibroblasts From the Adult Human Uterine Cervix
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10. Wilbanks, G.D., and Richart, R.M.:
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11. Wilbanks, G.D. and Richart, R.M.:
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Amer. J. Obstet. Gynec. 97: 1105-1110, 1967

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13. Wilbanks, G.D., Richart, R.M. and Terner, J.Y.:
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17. Wilbanks, G.D., Ikami, E., Prado, R., and Richart, R.M.:
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18. Wilbanks, G.D.
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19. Wilbanks, G.D.
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908 THE COURT: The only reason I asked the question whether it was necessary for me to read it now. I will be glad to if necessary and then rule on objections for the record, but if it isn't, if it is all right I will just read it at my pleasure, which will be as soon as I get off the bench.

MR. BATTLE: Yes, sir. That is the purpose of the offering.

THE COURT: Thank you.

Call your next witness.

MR. BATTLE: Defendant rests, Your Honor.

THE COURT: Is there any rebuttal?

Would you like a few minutes recess?

MS. WEYAND: If I might, please.

(A recess was taken at 3:05 to reconvene at 3:25.)

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(Below follows a deposition of Dr. George Wilbanks.)

DR. GEORGE WILBANKS being previously sworn,
909 testified as follows:

DIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Will you state for the record, your full name?
A. Dr. George Dewey Wilbanks.

Q. And where do you live?
A. I live at 39 East Elm Street in Chicago.

Q. Are you currently practicing your profession in Illinois?
A. Yes, I am.

Q. And what is that profession?
A. Obstetrics and gynecology.

Q. Have you prepared for me, at my request, your curriculum vitae?
A. Yes, I have.

Q. And does it set forth your personal history, professional experience?
A. Yes.

Q. Professional experience, hospital appointments, Board qualifications, Society memberships, miscellaneous activities, research interests and your publications?
A. Yes, it covers most of these things.

910 MR. KAMMHOLZ: I would like to have this curriculum vitae marked as Defendant's Exhibit G.E., Exhibit Number 1 for identification.

(Whereupon, the curriculum vitae of Dr. Wilbanks was marked as Defendant's G.E. Exhibit Number 1 for identification.)

BY MR. KAMMHOLZ:

Q. I show you, Doctor, a five-page document now marked Defendant's G.E. Exhibit Number 1 for identification and ask you whether or not that is your curriculum vitae? A. Yes, it is.

Q. What is the medical definition of "disease"?

A. The medical definition of disease would be abnormal state which is deleterious to the patient.

Q. What do the terms "sickness" and "illness" mean, medically speaking? A. I think, medically, it would be similar to "disease." I think I would prefer that "disease" would be the medical term and "illness" and "sickness" would be more lay terms for a similar condition.

Q. Are the terms "disease", "sickness" and "illness" synonymous from a medical point of view? A. Yes, I think, in general, they would be, although there are some innuendos of illness and sickness. Some lay people

911 use these terms meaning nausea and maybe just a feeling of poor feeling, where I think "disease" as used by the medical person, would be critically defined as a definite condition.

Q. Doctor, what is "pregnancy"? A. I would define "pregnancy", I suppose, as an altered state of physiology in the female, in which there is a fetus or embryo present.

Q. Under your definition, is "pregnancy" a state of abnormality? A. No, I would more call it a normal variant formational alteration of physiology.

Q. Is pregnancy a sickness or disease? A. I would not class it as such.

Q. Doctor, what is a morbid process? A. There are a number of definitions for morbidity. I would think, in obstetrics, for example, we define morbidity after delivery by certain degrees of fever. I think that perhaps the lay person might define morbid as having to do with death.

Q. Is pregnancy a morbid process? A. No, by no means, at least in my definition.

Q. Is your definition, as you understand it, a commonly accepted medical definition? A. Yes, I would

912 think so.

Q. Is pregnancy frequently accompanied by nausea? A. I could use the words "how frequently" and I would say it occurs in early pregnancy. I guess "frequency" would be a good word to use.

Q. Is it accomapnied by backache? A. Sometimes.

Q. And it is a fact of life, of course, that there is abdominal swelling in connection with pregnancy?
A. Yes, there is.

Q. This occurs always? A. Well, unless pregnancy terminates before the fetus gets to a certain size.

Q. Is it accompanied on occasion by constipation?
A. Yes, occasionally.

Q. Are all of these conditions symptoms of pregnancy?
A. Yes, I would think so – symptoms that are indicating something the patient complains about. Yes, I think those would be symptoms that could be attributed to pregnancy and occur in early pregnancy.

Q. Do these same symptoms also occur in connection with the female menstrual period? A. Yes. As a
913 matter of fact, many of them would occur with this. Many women notice some nausea, backache or cramping, actually some swelling and even some constipation immediately prior to menstruation.

Q. Now, Doctor, are these conditions, either when they occur in connection with pregnancy or in connection with the menstrual period, symptoms of disease?
A. They may be a symptom of disease but they might not actually reflect a disease. I am trying to think – if we don't drink enough or eat properly, anyone can become constipated or, say, if you have been nauseated and if you eat or drink too much.

Q. Are these conditions, in either circumstance, pregnancy or the menstrual period, symptoms of altered physiological condition? A. Yes, I would say they are.

Q. And this is true during the menstrual period as well as during pregnancy? A. We could draw some parallels in that just prior to menstruation there is elevation of certain hormones, which are also elevated in pregnancy and so we have a somewhat similar altered physiology, if you will, with some of the same results and symptoms. This is thought to be the cause of some of these symptoms.

914 Q. Are women, during pregnancy, usually under a doctor's care and do they usually deliver in a hospital?
A. Yes.

Q. Does such care and hospitalization indicate sickness? A. I would say "no." We would like to have every person or every woman, speaking from the standpoint of he obstetrician-gynecologist, under the care of a physician for routine examination. Therefore, I don't think this would necessarily say that one must be ill to see a physician.

Q. As a matter of fact, do you recommend at least annual examinations? A. At least examinations annually, yes.

Q. For all of us? A. Right and realistically what we have to offer a woman insofar as obstetrics goes, is care before delivery and delivery in a hospital.

Q. Why the delivery in a hospital, Doctor?
A. Well, I think for perhaps a couple of reasons. One is that certain emergencies that arise with delivery are best handled in a hospital and I guess perhaps one of the things is that it is a bit more convenient for medical personnel to be located in one place rather than to have, for
915 example, delivery in a home, which would be the opposite of delivery in a hospital.

Now, I might say that in England they have what is

called a "flying squad," wherein women are delivered in the home by midwives and if something goes wrong, a doctor with blood, instruments and an operating table are in the ambulance and they are rushed to the home so that the patient can be taken care of. As I say, this is not very efficient for such emergencies.

Q. Did I understand correctly then, Doctor, that one reason for hospitalization is the more efficient use of medical manpower or perhaps more efficient use of doctor power? A. I think physicians, as well as the ancillary personnel, do give support to the mother, do assist in helping with nursing. Therefore, it is not simply delivery – it is care of the mother and the infant's psychological support.

I think there is soemthing to a group of women being together after they have delivered. They can talk over their problems about the baby, the nursing and this sort of thing.

Q. Should pregnant women be restricted from physical activities during pregnancy? A. If the pregnancy is
916 not complicated, no. We do not recommend any real limitation of activities on our patients.

Q. Can pregnant women continue to hold gainful employment during pregnancy? A. Yes. As a matter of fact, two of our office nurses now are both pregnant.

Q. And when I asked you about holding gainful employment, for what period of pregnancy and how long prior to delivery? A. We don't make any restrictions on this. A woman may work as long as the pregnancy is progressing normally, even up until time of delivery.

We recently had one of our nurses go into labor while on duty and she delivered at the end of the shift without complication.

Q. You would say this is indeed an efficient utilization

of woman power in the hospital? A. Yes, a woman will do this at home. For example, in caring for children and taking care of her general household duties, she will not go to bed for the last six weeks or so.

Q. Would the lifting of weights or the climbing of stairs during pregnancy be harmful? A. I will merely
917 say "no."

Q. Are there any particular kinds of jobs you would restrict pregnant women from performing during pregnancy? A. Probably one or two that you might restrict pregnant women on. There have been some data recently on nurse-anesthetists who work in operating rooms with various anesthetic gases and there seems to be some increase in abortion in women who work in these noxious fumes. Therefore, any type of occupation in which the person was exposed to certain chemical fumes, that might have an effect on the fetus, I think should be limited.

I would imagine that in most jobs the safety factor would control this so that probably no one should be in that much of an atmosphere.

As a matter of fact, in relation to our anesthetics, we are now making certain that the gas is exhaled by the patients and conducted out of the operating room by an exhaust tube rather than just into the air as we have been doing it for many years.

Q. That is a new development? A. Yes, this is a new development, really in the last year or two.

Q. In the operating room? A. In the operating
918 room.

Q. Other than the example you just have referred to, are there jobs you would restrict pregnant women from performing? A. Offhand I would not think of any. The patients that I have had in pregnancy have been proceeding normally and we have not suggested change in

jobs. I cannot recall one.

Q. What about the physical activity, such as golfing, bowling, horseback riding? A. Well, our usual recommendation to the patient is that they continue their usual activities at a reasonable rate. If a woman plays golf or tennis, does horseback riding, then it is suggested they may continue whatever they are used to. About the only thing we suggest is "don't overexert" in connection with what they are normally used to.

Q. Does pregnancy affect coordination? A. I would say generally not. The only thing that might affect it would be in very late pregnancy, protuberant abdomen, very much as in a man or anyone who was twenty or thirty pounds overweight and had a protuberant abdomen. It would be, under those conditions, a little more difficult to get around.

919 As a matter of fact, one of my patients who played a lot of golf said that playing golf during pregnancy caused her game to improve because she had to hold her left arm straight in order to get around the uterus.

Q. Doctor, does pregnancy affect judgment? A. I would say not. Women care for their families, purchase groceries and, insofar as I know, their judgment is still good.

Q. Does pregnancy affect I.Q.? A. No, not that I am aware of.

Q. Doctor, do you consider the period of labor and delivery as times of periods of sickness? A. Well, this is still part of the normal process of pregnancy. I guess the delivery and labor would be the ultimate of this sort of altered process but I would not really define it as illness, I think, unless there is something abnormal.

In the majority of labor and deliveries there are no difficulties. However, there are a small percentage that

may be abnormal.

Q. Are the periods of labor and delivery accompanied by pain or at least extreme discomfort? A. Yes. I would say it is probably a majority that would be. I

920 have seen women who were well controlled, have done lamaze exercises in connection with natural childbirth and really have had very little discomfort during labor.

Q. Is the pain or extreme discomfort, when it does occur during labor and delivery, a symptom of disease? A. It may be a symptom of disease but not necessarily. For example, if you wear tight clothing you may have some discomfort but that is not a disease.

Q. However, in terms of the pregnant state and the ensuing labor and delivery, are those conditions disease? A. Would you repeat the question? A.

Q. Let me restate it. I think you may have answered it. Are the conditions of labor and subsequent delivery conditions of disease? A. No. As I have defined it, pregnancy, which would include labor and delivery, is a normal process. I don't think anyone would want to walk back from the labor room, although this has been done and although I would not class it as a disease.

Q. Doctor, are you familiar with the book entitled "Common Sense Childbirth"? A. Yes, I have seen it.

921 Q. By Lester Desses and Hasell, published for the record, by G.P. Putnam and Sons, New York, copyright 1969? A. Yes, I have seen it.

Q. I refer you to page 34 of the introduction and from this page read this statement:

"Pregnancy, labor and delivery are states unto themselves but they are by no means illnesses. In fact, most women benefit physically from experiencing them."

Now, do you agree with that statement in the text? A. Yes. As I have said, pregnancy and labor and delivery

are really not disease and I would say that most women probably do benefit from having a child. I think perhaps the most happy couples that we see after delivery are those who have gone through the labor, pregnancy and delivery together. It is a rather rewarding experience and a happy experience in the high percentage of pregnancies.

Q. What about the period after childbirth – is it a period of sickness? A. It is a period of return of the altered state of physiology back to the more usual states but, again, I think there is a normal process of involution

922 of the uterus, return of the uterus to normal size and other body functions that also return to the pre-pregnancy state.

Q. To put it in lay terms, this is a return to normal from the altered state? A. Yes, from the altered state.

Q. The altered state which continued to grow during the term of pregnancy? A. Right.

Q. In terms of physiology, how long is the period for the return to the normal state? A. Characteristically it has been defined as six weeks. Now, Dr. Williams at Johns Hopkins, one of the grandfathers of American obstetrics, did some studies indicating that the uterus returned to its normal state, at least the placental area, after birth or no later than six weeks and so most people have used this as their norm, I would say, for return to normal.

Q. To put it another way, is it fair to say then that the return to normal physiology occurs over a roughly six-week time span and that is a six-week return as contrasted to nine months during which the altered physiology developed? A. Right.

923 Q. Prior to delivery? A. Yes, I think that would be correct. Certain things return to normal much faster

than others. Certainly, for example, the hormone levels return to normal within forty-eight hours after delivery. It is more of a progressive thing over, roughly, a six-week period.

Q. During this six-week period, normally, is a woman disabled? A. Certainly in the early part of this I think she would be somewhat disabled. We send patients home now in three days, suggesting they take it a little easy for a couple of weeks, but most of the women are back taking care of their families fairly shortly after this. Most of the families now do not live in the same town with Mama or Grandmother and so they are back pretty much taking care of their house and the new baby as soon as they go home.

For example, I understand, in relation to a young woman who was finishing her residency at one of the neighboring hospitals, she was out for a total of two weeks from her internship with her first pregnancy, I guess it was. She was back working in two weeks. Therefore, this becomes quite a variable thing, I think.

924 Q. Did the two weeks cover the pre-delivery, delivery and post-delivery period? A. Yes. We do not usually recommend this but it is being done.

Q. You referred earlier, Doctor, to abnormal pregnancy. Would you tell us, pelase, about the kind of abnormalities that occur in connection with pregnancy and delivery? A. Probably I can group abnormalities, as we do for teaching medical students, into three trimesters of pregnancy, the first three months, the middle three months and the last three months.

Abnormal pregnancies in the first three months are usually related to some mal-development of the embryo, resulting in abortion called a spontaneous abortion. That would be by far the most common abnormality or com-

plication in early pregnancy.

In the mid-trimester, again, this is a relatively innocuous time during pregnancy, if you will, and about the only thing that occurs during the middle trimester is a rather rare condition called "the incompetent cervix" – maybe this is too detailed – in which there may be an early delivery.

An immature delivery, in the last trimester, really one
925 of the few, I guess we call it a disease state, something which complicates pregnancy is called a "toxemia pregnancy," which is a complex of high blood pressure, swelling and some kidney problems. Then abnormal pregnancies around the time of labor and delivery would be usually problems with bleeding due to some abnormalities associated with the placenta, the afterbirth.

Q. You made reference to high blood pressure during the toxemia condition which may occur during the third trimester? A. Yes.

Q. Can such high blood pressure be a continuing condition existing prior to pregnancy, for example, and continuing on during pregnancy? A. Yes. Women can have many diseases and still get pregnant. Therefore, if a woman has hypertension or high blood pressure, she may become pregnant and this would continue during the pregnancy. Here she would have a disease and the pregnancy would be on top of this disease state.

Q. What might be the nature of the disease state as pregnancy continues? A. Well, any disease state will alter the pregnancy. I am thinking of hypertension.

926 Another one that comes to mind is diabetes. Both of these have been characterized by problems of blood vessels which prevent nourishment of the fetus through the placenta. As best we know, however, once pregnancy is over, these diseases return to their pre-pregnant state.

Q. Does disability result, on occasion, from this combination of disease and pregnancy? A. Yes, I would say these would be what we call "high risk" pregnancies and that the combination of the disease state and the pregnancy would require special attention.

Q. Not one alone but a combination? A. Yes, a combination of the two. Well, I think certainly hypertension or diabetes in any person would. They are disease states.

Q. Doctor, referring back to your early testimony as to return to normal activities following delivery – is it a fact that the conditions of the female after delivery relative to normal activities are basically subjective conditions? A. I would have to say, I guess, the great part of this would be subjective conditions. We can measure the size of the uterus, the healing of the physiology perhaps in
927 terms of some muscle tone toward the pregnancy state.

Q. But medically are you able to measure the nature and extent of any backache? A. Well, this is very difficult to do.

Q. Or a headache? A. Virtually impossible. These are usually symptoms.

Q. And symptoms are subjective? A. Yes, they are or objective findings in an examination. Symptoms are the subjective interpretation.

Q. And in the medical diagnosis a physician must rely on subjective symptoms, such as hurt in the back? You cannot subjectively test these? A. In general, yes, we must rely on signs which are things we can see or feel or measure, and symptoms, which are the subjective interpretation of the condition by the patient.

Q. Turning now to another subject, Doctor, what are the most commonly used methods of contraception today? A. Well, two or three perhaps. First, are the birth con-

trol pills, then the intra-uterine devices and these are probably the most commonly utilized now. They still have the
928 other standard methods of the diaphragm, the vaginal diaphragm and the condom. This is usually used with some type of chemical preparation, cream or foam, foam alone, I would think, and then there is also rhythm, which again is not very satisfactory.

Q. Is the morning-after pill also available as a contraceptive device or is this technically not contraceptive?
A. I suppose it is. There are other things we can use to control pregnancy now but the morning-after pill has been accepted now by the FDA and most studies have shown it to be really quite effective if used properly.

Of course, now, you may know, we can use, at least in this state legally, abortion as a back-up for contraceptive measures – elective abortion.

Q. How much more, say, effective is abortion?
A. Well, it is quite effective. It is relatively safe if certain standards or safeguards are met. I think it is probably a very effective method of contraception.

We do not push this, I think no physician does. There are other methods for preventing pregnancy but once it has occurred this is a method of back-up, if you will, for other contraceptives.

929 Q. Are the contraceptives you described completely effective? A. I would say that in medicine nothing is a hundred per cent but the pill, if taken properly, is virtually a hundred per cent. The IUD, perhaps is a little less effective, although there are some new models of intra-uterine devices, some with copper, that seem to be more effective. However, these are very good methods of contraception.

I would say that we really have a pretty much unlimited method of contraception or virtually foolproof methods

of contraception if you use some type of contraceptive. Now, if you fail, wherein, for example, the diaphragm comes out or you do not use the foam at the time of ovulation, one can use the morning-after pill, if you will and then, if that fails, a sort of fail-safe would be the abortion. Also, in some people we can terminate pregnancy by using a small suction device which is even perhaps a little safer than performing an abortion later in pregnancy. This is relatively new and we do not have all the details on it yet.

Q. Is the latter technique sometimes referred to as "menstrual extraction"? A. Yes.

930 Q. Is it now available through the Midwest Population Center here in Chicago? A. I would think they would have anything that is available. They are a very aggressive population control group.

Q. Will you state for the record, please, the technique that is employed in the use of "menstrual extraction"?
A. Well, it is simply very much like the suction curetage that is used in later pregnancy, except that it uses a smaller instrument, a smaller cannula or tube being inserted into the uterus. It is so small that it doesn't require stretching or dilating of the cervix and so it is relatively painless. Suction is applied to this tube or cannula and the lining of the uterus is essentially sucked out, if you will.

Q. How is the suction applied? A. Maybe by machine or some apparatus can be used, simply a syringe, to create a negative pressure.

Q. And this is sometimes referred to as the "lunch hour treatment"? A. Yes, that is what it is commonly called – the "lunch hour treatment." It requires just a few moments.

We have been using this technique for getting samples of the endometrium for years but have not, of course, used it as a method of abortion, if you will, until recently.

Q. Are abortions performed at the Presbyterian-St. Luke's Medical Center? A. Yes. We do elective abortions.

MR. KAMMHOLZ: I have no further questions.

CROSS-EXAMINATION

BY MS. WEYAND:

Q. Doctor, I take it that this menstrual extraction which you were just talking about is not something performed by the individual themselves – it is performed by a physician? A. Yes.

Q. In a hospital or clinic of some sort? A. Yes, or a doctor's office.

Q. Presbyterian-St. Luke's Hospital has a policy of ninety days, if you will, paying sick leave for faculty members, does it not, when they are on disability? A. I would have to say I don't know the details of it.

Q. You don't know the details on it? A. No.

932 Q. They have a policy that picks up after ninety days for sixty percent of sickness and accident, an insurance policy? A. That sounds correct, I really don't know.

Q. You don't know the details? A. No.

Q. However, you know there is something of that sort? A. Yes.

Q. Are you aware of the issue that has come up with various female faculty members, of their right to be paid sick leave during the period of childbirth? A. Yes.

Q. It has come up, has it not? A. I understand that it has. I am not directly involved.

Q. You are not directly involved at all – you have been told it has? A. Yes, I have been told.

Q. Have the people taking a stand consulted you as

to whether you regarded the period of delivery as illness? A. No.

Q. They have not consulted you? None of those

933 women that I am aware of.

Q. Has the hospital administration talked to you about this? A. That is where I heard there was some interest in this, a definition from, I guess, John King, who was in charge of personnel.

Q. Did you discuss with them your view on whether childbirth was an illness when it came up? A. Yes, I did.

Q. You discussed it with him? A. Yes.

Q. You also discussed it with the Chairmen's Group, did you not, of the various chairmen of the obstetrics departments in the City of Chicago? A. Yes.

Q. And when you discussed it with this Chairmen's Group, you told them it had come up in relation to payment to employees of Presbyterian-St. Luke's Hospital, did you not? A. Yes, I said I heard there was some interest in nursing, I believe was the original thing that came up.

Q. And you told them that because of this interest it was important they consider the problem and take a position as to whether pregnancy was an illness, did you

934 not? A. Yes, I thought this was a problem we should deal with or at least be aware of what was going on.

Q. You were instrumental in the group taking this up – you were the moving person in the group taking this up? A. Yes.

Q. Could you tell me when that was taken up, at what meeting? Do you remember the date? A. I believe it was two meetings ago. It must have been six or eight weeks, I cannot recall the date. However, I

can look it up for you if it is important.

Q. Now, at this meeting was it mentioned that the EEOC charges and the Illinois FEP charges were pending against at least one of the hospitals by a chairman who was a member of the group? A. No, I do not recall.

Q. It wasn't mentioned? A. No.

Q. Otherwise, have you heard about these charges – that there were these charges pending against a certain hospital? A. No.

Q. You did not know about that? A. I was not
935 aware of that. You will have to explain to me the initials that you are using.

Q. I have been informed by the staff of the Equal Employment Opportunity Commission here in Chicago that charges have been filed against one of the hospital whose chairman was present at this meeting. The EEOC is our shorthand for Equal Employment Opportunity Commission, which is the commission that has ruled that it constitutes sex discrimination not to pay the same disability insurance payments as we paid for periods you are disabled for periods related to pregnancy, and there is an Illinois State Agency that does the same thing which is known as the Illinois FEP. It stands for State Fair Employment Practice Act and Illinois has an anti-discrimination statute that prohibits discrimination because of sex and when employees are not paid something that they think they should get on a non-discriminatory basis, then they can file charges with these agencies.

I just wondered if you had been informed about the state of those proceedings at all?

MR. KAMMHOLZ: Just a moment, before you answer, Doctor.

For the record I object to the form of question. It calls for a conclusion. It assumes facts not of record.

936 Indeed, it includes an erroneous legal conclusion when counsel characterizes what the EEOC has done as "ruled." For these reasons and for the further reason that the question is double or triple, I object to it.

BY MS. WEYAND:

Q. Doctor, maybe I should restate the matter. The EEOC has issued a decision holding that it so constitutes, and issued a guideline which is an interpretive rule and the question is – have you heard of any proceedings before the EEOC or the State FEP involving your hospital or any hospital in Chicago?

MR. KAMMHOLZ: Again, I object to the form of the question. Counsel has characterized "a decision of the EEOC" and, indeed, if there is such decision, a foundation should first be laid.

BY MS. WEYAND:

Q. I would like to ask the Doctor this, Have you heard about any proceeding before any of the agencies about employees getting paid sickness and accident pay for the time they are out? A. Well, as I say, I am supposed to be an expert witness about pregnancy. I can say we have had some general discussion with regard to this situation which you alluded to but I don't remember any decisions or anything that has been rendered. I did not even remember the initials of the group.

Q. You remember what was said? A. A lot was said. I don't recall the details of the discussion.

Q. However, you said that you raised the issue?
A. Right.

Q. What did you say when you raised the issue – can you tell me as best you can recall what you said when you raised the issue? A. I came up after I was with Mr. King and Mr. Kammholz – who asked me about this particular case – and I asked the group in

an informal manner the question, "How do you classify pregnancy – is it a disease or not?" That was the discussion.

Q. How did you happen to raise that? Do you remember what you told them? A. Well, I said, as best I recall, that there was a case pending whether a patient should be disabled, a woman should be disabled with pregnancy and the question was whether pregnancy was a disease or not. I think that was the gist of my discussion with them.

Q. Did you mention that the issue had come up with regard to employees of Chicago hospitals? A. Yes, I
938 did, I think, because Mr. King had mentioned there was a possible problem at Presbyterian-St. Luke's.

Q. And do you know whether Presbyterian-St. Luke's had made any commitments to its doctors, faculty members, during the period they were in the hospital having a baby? A. I do not.

Q. You don't know whether they paid them or not? A. I don't know whether they paid them or not.

Q. You don't know what position Presbyterian-St. Luke's Hospital has taken on this issue? A. I have not talked to Mr. King since that initial discussion.

Q. Did any of the other members from the group indicate an awareness that such a problem had arisen, as to any employees of their hospitals? A. No, I don't believe anyone mentioned that it was a problem at their hospital.

Q. At this meeting, was there a discussion as to whet whether the abnormalities of pregnancy, such as toxemia, was a disease – as to whether sickness or accident pay
939 should be paid for a period of disease related to pregnancy? A. I don't remember this particular question being discussed. I don't remember that.

Q. As far as you recall, the only issue was whether pregnancy constituted a disease, is that correct? A. Yes, that was the question I posed to the group.

Q. And, insofar as you recall, there was no discussion of complicated pregnancies? A. I am sure this must have come up at some time in that there was a difference from a normal pregnancy but I cannot recall really any specific issues.

Q. The complication of pregnancy is a disease, is it not? A. There are certain diseases that occur in pregnancy.

Q. Would you call the state that develops during pregnancy a complication of pregnancy which did not amount to a disease?

MR. KAMMHOLZ: Just a moment, Doctor, will you restate the question.

BY MS. WEYAND:

Q. Doctor, is there any condition of pregnancy which
940 the medical profession designates a complication of pregnancy which the medical profession would not also regard as a disease. A. I don't know, really, that I can answer that question.

Q. Maybe I should start over.

The medical profession uses the term "complication of pregnancy" to refer to abnormal complications in pregnancy, is that correct? A. Yes.

Q. When you use the term "complication of pregnancy" to refer to the abnormal state, is it also referring to a disease? A. I would say it may or may not refer to a disease.

Q. Would you state any complication of pregnancy which you do not regard as a disease? A. Yes, I think I know of one. We usually think of peurperal morbidity as a complication of pregnancy and many

times we find no cause for this and so I think that would not be classified as a disease.

Q. Will you explain what peurperal morbidity is? A. This is the elevation of temperature over a certain
941 degree for two days.

Q. What is that degree? A. 100.4 degrees.

Q. Do you administer treatment in case of peurperal morbidity? A. No treatment.

Q. Is a woman disabled by peurperal morbidity? A. I would say no more so than the patient who was without this for that particular day.

Q. It, itself is not a disabling state? A. No more than the normal postpartum state.

Q. This is a postpartum development entirely, is it? A. Yes, so defined.

Q. It does not occur prior to delivery? A. Right.

Q. Are headaches and backaches a usual incident to postpartum state? A. I would say "no."

Q. Does the medical literature indicate that these are among the symptoms which occur during a postpartum state? A. Would you repeat the question?

Q. Does the medical literature indicate that backache
942 and headache are symptoms which are found during the postpartum state? A. You can find most anything in the medical literature. I would say I am not aware of this.

Q. Is mal-development of the embryo a disease? A. It is an abnormal pregnancy.

Q. Is this a disease? A. I don't know that I would call it a disease.

Q. If it rises to the state of causing a premature termination of pregnancy, is it a disease? A. I would call it an abnormal state of development, which may be or may not be the result of a disease.

Q. I believe you stated that most common abnormality during the first trimester was usually related to the mal-development of the embryo, is that correct? A. Yes, I think that is what I said.

Q. And you said tht this abnormality arises due to the fact that the mal-development of the embryo gives rise to a premature determination of pregnancy, is that correct? A. Yes.

Q. And is this premature termination of pregnancy a
943 disease? A. It may be the result of natural causes or it may be the result of infection. The infection I would call a disease if it were a chromosomal abnormality not related to disease, I would not call it.

Q. Even if it results in premature termination of the pregnancy? A. Right. This would be an abnormal pregnancy and disabling for this period of time.

Q. And when this occurs, is hospitalization usually recommended by the doctor? A. Yes, usually.

Q. It is standard procedure, is it not? A. I would say, in general, depending somewhat on the state of pregnancy and length of pregnancy and number of other medical factors.

Q. What are the symptoms during the first trimester which result in mal-development of the embryo? A. Very early there are no difference in symptoms. Later it would be bleeding which would be the primary symptom.

Q. There you are talking about the first trimester? A. The first trimester.

944 Q. You have bleeding? A. Right.

Q. Does this bleeding on occasion reach a hemorrhaging state that may be injurious to the health of the mother? A. Yes, it does.

Q. When hemorrhaging of this extent occurs, do you regard this as a disease? A. This would be certainly a severe alteration of pregnancy or abnormality or pregnancy. I don't know that I would really classify it as a disease per se.

Q. There are women who die as a result of such hemorrhaging, are there not? A. Yes, that is true.

Q. In fact, it is a chief cause of death in the first trimester, is it not? A. I don't have the facts at hand on this but, certainly, I would say this is probably true – either hemorrhaging from abortion or from an ectopic pregnancy.

Q. Do you regard ectopic pregnancy as a disease? A. This is certainly an abnormal pregnancy. I would prefer to call it that.

Q. You would not call it a disease? A. No.

945 How did you define disease again? A. I defined disease as an abnormal state of health which is injurious to the individual.

Q. An ectopic pregnancy does not come within that definition of disease? A. Yes, I guess it could be so construed.

Q. Is there any reason why it would not be so construed? A. Another criteria that I usually would use for disease is that there is an act responsible for the disease.

Q. Is this accepted medical definition of disease – you must know the act responsible for it? A. Many times we don't know the act responsible for the disease.

Q. That is a disease if you don't know the act responsible, is that correct? A. Yes, in general, you can use this.

Q. Will you repeat what the act responsible has to do with the definition of disease? A. As I say, one of

my indications for disease is a condition which is due to some act, innocuous act, which results in abnormal alteration in body function.

Q. Now, an ectopic pregnancy, as I understand it,

946 consists of a fertilized ovum developing outside the uterus. Is that correct? A. That is correct.

Q. Would you add anything else to my definition or is that the complete definition of an ectopic pregnancy? A. We usually call it an extra-uterine pregnancy. That would be adequate.

Q. An extra-uterine and ectopic pregnancy are synonymous? A. Yes.

Q. You say you might not consider an extra-uterine pregnancy a disease because you do not know the agent which resulted in the ovum fertilized developing outside of the uterus – is this what you are telling me? A. Yes, that is what I said.

Q. Just because you do not know what agent was responsible for the fact that the ovum, when fertilized, did not reach the uterus and developed outside, you would say this is not a disease – is this what you are saying? A. I am saying, that at least in my classical definition of a disease, it did not have an agent that would result in the altered state.

Q. In fact, the ovum, when fertilized, developed outside of the uterus, gives rise to certain symptoms in

947 the pregnant female, does it not? A. Yes.

Q. And it is an agent that causes here a very serious disease, is it not? A. Yes, the pregnancy outside of the uterus does cause severe symptoms.

Q. Could you describe those symptoms? A. I can describe some symptoms of this.

Q. Would you describe the symptoms that the medical profession normally describes when it is talking about

the extra-uterine pregnancy? A. One of the terms we use insofar as symptoms of ectopic pregnancy is concerned is its inconsistency. There have been numerous quotations to this effect.

The classic symptom of ectopic pregnancy, the most common symptom is pain, abnormal bleeding. These would be the two.

Q. Does this always require surgical procedure?
A. It probably should, if recognized. It does not always.

Q. Is it not standard procedure for a physician to recommend surgical procedures when he diagnoses a pain and ectopic pregnancy? A. That is correct.

948 Q. No physician would think of diagnosing anything as ectopic pregnancy without recommending surgery to remove the fetus in its development, would he?
A. No.

Q. There is no other way of getting rid of it known but surgery? A. There is a condition under which, when a pregnancy is extruded from the tube and is not recognized, usually you may find evidence of this later on.

Q. However, the physician has no way of getting rid of it before operating, does he? A. That is correct.

Q. It is impossible for an ectopic pregnancy to go to term, is that correct? A. No, that is incorrect. There are occasional extra-uterine pregnancies which do go to term.

Q. Resulting in a normal baby? A. A normal baby, yes.

Q. Which develops where, in the fallopian tube?
A. Usually in the abdomen.

Q. In the abdomen but it is very rare? A. Very rare, yes.

Q. And a physician doesn't take a chance on that, if he finds an ectopic pregnancy, does he? A. Not early

949 we do not.

Q. Do you know of any other conditons that require surgery that you would not call a disease? A. Yes, I can think of a number of cosmetic surgical procedures that would be done for situations not a disease in plastic surgery.

Q. And if I told you that General Electric had stipulated that it pay sickness and accident for elective plastic surgery, you would say they were paying for something which was not a disease, would you not?

MR. KAMMHOLZ: Just a moment. This calls for a legal conclusion and I object to the question. It also assumes something that is not of record here and I would also object for that reason.

BY MS. WEYAND:

Q. On the first visit of a female who suspects she is pregnant to a doctor, the doctor engages in certain diagnostic procedures, does he not? A. Yes, in a general sense, I would say.

Q. What are those diagnostic procedures in which he engages? A. Our usual routine would be a history, a general physical examination, pelvic examination, a pap smear, if one had not been done recently, a blood count,
950 urinalysis and we are doing now Rubella titers.

Q. What is the name of the test that is used to determine pregnancy? A. There are a number of them. The Graph Index is one. The Prognosticolum, that is another. There is also the AUCG test.

Q. Can one normally observe by a pelvic examination whether the woman is pregnant or will you also have one if these other tests, laboratory tests made? A. I don't routinely do biological laboratory tests for pregnancy unless there is some question after my examination.

Q. Do you know what the medical profession normally does? A. I can really only speak for our own office.

Q. If you believe the woman pregnant through pelvic examination, then you rely on your judgment there and you have no laboratory tests performed, is that correct?
A. Most of the time, yes.

Q. Do you prescribe medication of any sort, any vitamins or anything for the pregnant woman to take as a
951 matter of routine? A. Yes, we utilize a pre-natal vitamin and an iron supplement.

Q. As a routine matter for all pregnant females?
A. Virtually all, yes.

Q. Between the time of the first examination and the time she goes into delivery, do you prescribe other drugs or other vitamins for her to take? A. No.

Q. Those are the only ones in a perfectly normal case?
A. Correct.

Q. How often do you recommend that a pregnant female visit the doctor? A. Usually once a month during the first seven months, two weeks during the eighth month and during the ninth month, every week.

Q. Is the toxemia of which you speak a peculiarity of pregnancy or does toxemia occur in non-pregnant persons?
A. Toxemia of pregnancy occurs only in pregnancy.

Q. However, there are other toxemias?
A. Yes, there are.

Q. How do they differ from the toxemia of pregnancy?
952 A. I usually prefer the term pre-ecilampsis rather than "toxemia" because "toxemia" is a rather broad general term in our hospital and in our technique we try to stay away from that type of term, using the term "eclampsia."

Q. You used the term "toxemia" during your testimony? A. Yes.

Q. What toxemias of non-pregnancy are similar in their characteristics and symptoms with those of eclampsia?
A. Well, I was asked to present as an expert in obstetrics and gynecology and not in general medicine. Right offhand, I do not have in my mind another term. that we would use as "toxemia" with the same symptoms.

Q. They involve the same symptoms involved by people who are not pregnant, is that correct?
A. Yes.

Q. And the toxemias of pregnancy, would you explain medically what this is caused by? A. We don't know what it is caused by.

Q. It is characterized by a building up of fluids in the
953 tissues, is that correct? A. Toxemia is defined with three findings – elevated blood pressure over the pre-pregnancy level, protein in the urine and edema.

Q. All three of those conditions occur in the non-pregnant individuals? A. Yes.

Q. They occur in males? A. Yes, they may occur.

Q. Is Bell's Palsy a disease of pregnancy? A. It occurs in pregnancy, yes.

Q. Would it occur in non-pregnant women?
A. Right.

Q. It occurs in males? A. Correct.

Q. And is there any known relationship between pregnancy and Bell's Palsy? A. It does occur in late pregnancy.

Q. Is there any great incident of pregnant females that have Bell's Palsy over non-pregnant individuals insofar as the medical literature indicates? A. I have not reviewed the literature in this regard.

Q. You don't know? A. I have seen women who have had it during pregnancy and who have not, who were not pregnant.

Q. Do you know medically where there is considered to be any relationship between pregnancy and Bell's Palsy? A. There is some indication there may be some swelling which may occur during pregnancy around the nerve roots. Bell's Palsy may occur.

Q. A tumor can cause Bell's Palsy? A. Yes.

Q. Other swelling can cause Bell's Palsy? A. Right.

Q. Except to the extent there may be a swelling as a result of pregnancy, there are no other known relationships between pregnancy and Bell's Palsy? A. That is my information, yes.

Q. A man who puts on a great deal of weight, becomes obese, and is discovered to be diabetic when he didn't know it, this can enhance the diabetic state, can it not, and make it worse? A. Yes, it can become manifest.

Q. Weight does aggravate diabetes, is that correct?
A. Yes.

Q. When a pregnant woman discovers she has diabetes,
955 which she did not know before, a pre-existing diabetic state, which becomes aggravated, is this due to any other reason than her gaining weight? A. Yes.

Q. It is due to another reason? A. Probably due also to the elevated cortisone that occurs in pregnancy.

Q. However, it may not be – it may be purely a weight result? A. It may be both.

Q. It may be both and maybe just weight?
A. Yes.

Q. On a thyroid condition, again, a man who either doesn't know he has thyroid or who has a pre-existing thyroid condition and puts on a large amount of weight, he will have this thyroid condition aggravated, is that not correct? A. I really don't know.

Q. You don't know? A. I don't know.

Q. Women in pregnancy do have thyroid problems at times – they discover they had this thyroid, they did not know it, it was aggravated by a pre-existing condition, is
956 that not correct? A. Yes, I would say so, a woman could discover this during pregnancy.

Q. Have you had experience with a thyroid problem in pregnant women? A. Yes, I have.

Q. Did she have it beforehand or did she discover the thyroid problem during pregnancy? A. A majority of them were discovered before pregnancy.

Q. You don't know about the weight effect on pregnancy, thyroid weight effect on this? A. I am not aware of that.

Q. If a woman has thyroid problems during pregnancy, would you regard this as a disease? A. Yes.

Q. The same as if she has Bell's Palsy, that is a disease, is it not, when caused by increase in weight, swelling or whatever caused it – but it is a disease?
A. Yes, I think we would consider that a disease, although it is really a finding.

Q. Tell me what happens in Bell's Palsy – what are the symptoms of Bell's Palsy? A. I can give you from the general medical position. I am not an expert in neurology.

It is due to a paralysis of the branches of the facial nerves. This has happened in at least one patient who developed this during late pregnancy.

Q. How many patients do you handle a year, a month? What kind of obstetrical practice, if you have one, do you have? I am just trying to get at whether you have one in connection with your department. A. I have been practicing obstetrics, I guess, since 1962, when I finished my training. I have had as many as sixty deliveries a month. Right now we are doing ten or twelve a month.

Q. Do you participate yourself or do you supervise your teaching staff – is that what you are? A. I do participate and I do deliveries. I participate in teaching.

Q. You see obstetrical patients? A. Yes.

Q. Do you see them from throughout the first interview up to delivery? A. Yes, I do.

Q. And how many patients have you had since your ten or eleven years in the field? A. That would be really difficult to say. I could give you some estimates.

For example, for two years, two of us did sixty deliv-
958 eries alone, roughly.

Q. And that was when? A. In 1962-1964.

Q. Now, Doctor, I am going to read you a question and an answer given by William C. Keettels, who is head of the Department of Obstetrics and Gynecology, University Hospitals, Iowa State University.

The question and answer I am going to read to you was given as a part of a deposition *Heinen v. Johnston Community School District* before the Iowa Civil Rights Commission, taken on October 9, 1972, by the Attorney General of the State of Iowa. The portion that I am going to read to you appears on page 21 of the deposition. Now, you have to go a little way back to get into the whole thing.

It reads as follows:

"It is kind of interesting about how people, how the medical profession changes. As you know, there was a time when women had to stay in bed for fourteen days after delivery and it took a long time before ambulation, and allowing them out of bed came about, and you can just see the transition that occurred, that many doctors
959 were so opposed to that, and all sorts of dire consequences would develop but this just took time before they accepted this. Now, everybody accepts ambulation within a few

hours after delivery as perfectly acceptable."

Now, we come to the question – "Would we be in a same kind of transition period perhaps with the pregnant female working up until time of delivery?"

The answer – "I think, yes. It has been a transition but I think we have made it now. The majority would accept that they could work up to term."

Now, Doctor, would you agree on that estimate of position taken by one of your medical profession? Would you agree with that statement? A. Yes, I would agree because, as I have stated earlier, insofar as our patients are concerned, they may work up until term.

Q. You agree the medical profession is in agreement today, the majority of them, following the same practice as far as you know? A. I can speak for those that I know.

Q. They do? A. Yes. I cannot, however, speak for the whole medical profession but I would agree with this. It is our practice in our own hospital.

960 Q. Are you acquainted with the religious convictions of various well-established religions which preclude their members from use of contraceptives without serious violation of religious beliefs? A. That is a broad statement. I would say I will have to answer "yes," I am generally aware of the Catholic situation – that they have regulations pertaining to this.

Q. With respect to such person, would it not require they lead a life of abstinence to avoid an unplanned pregnancy? In other words, would members who profess to this religious belief be precluded from the use of contraceptives – would it not require they lead a life of abstinence to avoid pregnancy? A. I would say "no." For example, rhythm can be used by certain couples very satisfactorily and this is, from my understanding, acceptable to their religion at least.

Q. Is the rhythm method considered an effective method of contraception? A. It is considered a method of contraception.

As I stated earlier, it is less effective than some other methods.

Q. A physician does not recommend it to any person who really wants to avoid pregnancy, does he?

961 A. My own feeling is that I give a patient a choice of contraceptive devices, etc., explaining to them what I know about each method and letting them choose them based on their own feelings.

Q. What do you state to them, about the effectiveness of rhythm? A. In general I would say there is a safe period, but the patient must have fairly regular menstrual periods and they must adhere very strictly to the abstinence during the fertile period.

Q. There are some with whom it would never work, is that not correct? A. I guess there are some women whom nothing would ever work on. There are certain persons who perhaps cannot use anything.

Q. There are certain women who are so irregular that there is no rhythm period available, is that correct?
A. No, I think you could calculate formulas. You can calculate a "safe" period.

Q. You have never seen one so irregular you could not calculate a "safe" period? A. If there is one that way, then we usually allow them to use birth control pills.

962 Q. That is your experience? A. That is my experience.

Q. It takes a woman with a considerable degree of intelligence who has irregular periods to calculate the cycle, does it not? A. Well, you see, she is going to have to know how to count.

Q. She has to keep track of them on calendars?
A. Yes

Q. Are there today doubts as to the complete safety for all persons of the pill? A. Yes.

Q. It involves a risk as far as the medical person is concerned, for certain individuals? A. There is data in the literature on both sides of the question as to the exact safety of the pill.

Q. There is respected medical opinion it does involve a risk? A. Yes.

Q. Are you acquainted with the type of risk described as involved, such as blood clots and serious things of that nature? A. Yes, in general I am familiar with them.

963 Q. What are those risks? A. I would say the most serious risk is thrombo-embolitic – a thrombo-embolitic phenomenon.

Q. Which is a blood clot? A. Yes.

Q. It can be fatal? A. It can be fatal, yes.

Q. Is this also true of the "after morning" pill and the birth control pill? In other words, my question is – may there not still be some risk involved in the morning-after pill? A. One might speculate this. I don't believe there is any data to support this.

Q. We don't know yet? A. We don't know yet.

Q. It is too new to know? A. Yes.

Q. That is a correct statement? A. Yes. I would say this, it is safe enough, inasmuch as they have released information for use in this manner.

Q. They released the birth control pill and the medical profession, certain parts of it, think there is real risk of fatality for certain individuals using it?

964 A. Right, but other groups do not.

Q. Can you name the complications of pregnancy which include the need for surgical procedure?
A. I could name some. I believe we have already discussed ectopic pregnancy, some early abortions. An incompetent cervix has been discussed in the mid-trimester. Certain complications of labor, which would require Caesarean secton. I think those would be the main ones.

Q. Suppose a woman had a previous Caesarean section, is it accepted practice to have her subsequent deliveries by Caesarean section? A. There are two schools of thought on this.

There are some who feel that the old adage "once a Caesarean, always a Caesarean." There are others who will allow the woman to deliver from below, deliver normally after Caesarean section. It depends on certain criteria.

Q. The risk of delivery of a woman who has had a Caesarean means rupture, is that correct, at the scar?
A. Yes.

Q. And she may hemorrhage if that occurs and a Caesarean would have to be performed? A. Yes.

965 Q. Do these surgical procedures differ in any way from surgical procedures used in non-pregnancy cases?
A. I will have to say "yes."

Q. In what respect? A. That these conditions do not occur without a pregnancy, complication pregnancy.

Q. Is the anesthesia used any different because it is a pregnancy-related surgery? A. When there is consideration of the fetus or the embryo, then we would have a severe Caesarean section and we would use a little different type of anesthesia.

Q. You generally use a different anesthesia? A. Not in general a different anesthesia but we would like it,

hopefully, administered with the necessity of understanding that the woman is pregnant and with due regard to the baby.

Q. You normally administer the same anesthesia as administered under occasions except for the anesthesiologist being aware there is a second life at stake? A. Yes, and there are some types you prefer during pregnancy over other types of anesthesia.

Q. Do you use those for other than pregnancy also, you do, do you not? A. Yes.

966 Q. Are the blood transfusions used in surgery arising out of pregnancy different from blood transfusion methods used in other surgical cases? A. No.

Q. The same blood transfusion procedures are used?
A. Yes.

Q. Does the wound which is inflicted by surgery related to pregnancy require different treatment than the wound inflicted by surgery that is non-pregnancy related?

MR. KAMMHOLZ: I object to the question. There is nothing of record to indicate that surgery inflicts a wound and I think the characterization is improper.

BY MS. WEYAND:

Q. Doctor, when you cut the woman open or cut somebody else open, what do you call that cut?
A. An incision. I believe that is the proper term.

Q. Is the incision which you make in surgery involving pregnancy any different from the incision you make

967 in a non-pregnancy related surgery? A. No. The surgical incision would be made appropriate to the type of surgery to be performed. In general, we would use something similar.

Q. Similar to what you would use in hemorrhaging ulcer or gall bladder? An incision that is similar?
A. They are not similar.

Q. Which ones would it be similar to? A. A Caesarean section would be similar for abdominal hysterectomy.

Q. It is different from an appendectomy incision?
A. Yes.

Q. How does it differ from an appendectomy?
A. An appendectomy is over McBurney's point, over the areas you are trying to remove, the appendix.

The incision for a Caesarean section is usually in the middle.

Q. It is a different position? Does this involve different surgical procedures? A. I would say "no." You make an incision appropriate to the thing you are going to be doing.

968 Q. Does recovery from the incision inflicted by surgery related to pregnancy involve any different aspects than recovery from an incision from other surgery? A. No, I would say not.

Q. How does a doctor close an incision after surgery?
A. With various types of sutures.

Q. Are the sutures in pregnancy any different from those you use in non-pregnancy surgery? A. In general not, I would say no.

Q. Does the effect of a woman of surgery from a surgical procedure related to pregnancy differ medically from the effect on a patient in relation to other surgery?
A. I would say "no."

Q. Does a pregnant patient's condition which is attributable to pregnancy, which requires surgery, have a disease? A. Now, I think we have been all through this.

Q. Are there some instances where surgery is required in pregnancy that would be classified as a disease?
A. Yes, if a woman has gallstones. This is a disease.

969 Q. Is that related to pregnancy? A. No.

Q. Does she have anything related to pregnancy that requires surgery that you would classify as a disease?
A. My concept, and what I have tried to develop, is that there are complications of pregnancy which are alterations in the normal state of pregnancy which I would not really relate as a disease. I can't think of one at the moment. We have gone through the ectopic pregnancy.

Q. Now, as I understand it, you cannot think of any complications of pregnancy which require surgery which you would regard as a disease? A. None that come to mind now.

Q. And you believe you are using the word "disease" in this regard in accepted medical sense of the word "disease"? A. Yes.

Q. Do you know whether this is a matter wherein there is a difference of medical opinion? A. There is a difference of medical opinion in everything. I suppose there must be. I said that I have gone from my own experience and sort of what I feel is accepted in this area by my colleagues.

970 Q. If a pregnant female suffers from a heart condition, do her disabilities differ medically from those of a male who has had a large gain in weight? A. No.

Q. Are you acquainted with the extent to which medical insurance is prevalent today, major medical and hospitalization covering maternity benefits, including prenatal care and delivery? A. I would say "no." This is really not my field.

Q. You have no idea what is generally included in medical policies? A. No, I really have no knowledge or valid information on that.

MS. WEYAND: I believe that is all the questions I am going to ask because I know the doctor has to get away.

MR. KAMMHOLZ: I am aware also of the Doctor's schedule and I appreciate your terminating your questions at this point. I have perhaps one or two more questions.

REDIRECT EXAMINATION

BY MR. KAMMHOLZ:

Q. Doctor, does the use of an IUD, diaphragm, a condom or foams, jellies, creams, involve any kind of health
971 risk to the female? A. You did start with IUD?

Q. Yes. A. I would say that would perhaps have some slight health risk. The other methods, relatively little if any serious problem.

Q. What would be the health risk involved in connection with the use of IUD? A. The main health risk is perforation of the uterus by the device.

Q. To your knowledge, does this occur frequently? A. Infrequently, but it does occur.

Q. You were interrogated on cross-examination with regard to malformed embryos. Is it not a fact that fertilization of the ovum is incomplete in perhaps ten to fifteen percent of the cases resulting in spontaneous abortion in those instances? A. Yes. In studies examining early abortions, spontaneous early abortions, there was some defect in the embryo or the germ plasma in roughly ninety percent of those examined.

Q. This is comparable perhaps to the imperfection in flowers and seeds in plant life, to use a lay term?
972 A. I would assume so. My own illustration I use when I am talking with a patient is that when, as it is understood, from two cells an embryo must be formed, a baby must be born, you wonder why it ever goes correctly. So I am sure this happens in nature or otherwise, other than the human.

MR. KAMMHOLZ: I have no further questions.
MR. WEYAND: No further questions.

THE COURT: Ms. Weyand, gentlemen, I have the deposition and I find what appears to be a stipulation with some editorial comment on the side. I don't know whether you intended to leave that in there or not. If not, you can take it back.

The corrections that were made in the deposition, anyway, there is a sheet in there, give it to counsel.

MR. KAMMHOLZ: I think I know what it is, but it isn't necessary because the corrections have been noted in the stipulation.

* * * * *

973 THE COURT: Thank you.

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Since there is no further evidence there is no surrebuttal and the case is closed.

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GE EXHIBIT NO.1
(This is the same as Exhibit A-2 to answers of Defendent General Electric Company to Plaintiffs' Fourth Interrogation, printed at p. _____, *supra.*)

GE EXHIBIT No. 2
Employee and Community Relations Instructions No. 906,
G.E. Salem, Virginia Plant, issued 11-10-71

DRIVE SYSTEMS PRODUCT DEPARTMENT
SECTION: Employee & Community Rel.

SUPERSEDES	ISSUED	INSTRUCTION
4-1-70	11-10-71	No. 9.06

SUBJECT: PERSONAL ILLNESS - PREGNANCY

It is generally agreed by obstetricians that women may continue to work through the sixth month of pregnancy when the pregnancy is uncomplicated and may resume work at the end of the eight weeks following termination of pregnancy. Pregnant employees will be required to obtain written permission from their personal physician to work beyond the sixth month of pregnancy. Work beyond the sixth month of pregnancy will also require the approval of the Plant Physician. A pregnant employee may terminate active work any time before the sixth month if she so elects upon the advice of her personal physician.

It is the Supervisor's responsibility to refer the employee to the plant Dispensary when he learns that the employee is pregnant. The employee will be given a form to be completed by her personal physician indicating the expected termination date of pregnancy and granting permission for continued work, if desired.

After review by the Plant Physician, the nurse will prepare a letter addressed to the employee's Supervisor with a copy to the Personnel office giving the last day that the employee can work and noting any work restrictions.

Pregnant employees will be required to discontinue working and will be placed on "Pregnancy" status in cases where the personal physician or the plant physician determines it is unwise to continue at work because of medical reasons, when suitable work is no longer available, and when through inefficient performance, the employee demonstrates inability to perform work satisfactorily.

The employee's status is indicated as "personal illness" during such absence and is covered by the current rules relating to such absences.

The employee is not required to keep her supervisor advised as to her condition until eight weeks after termination of pregnancy. Failure to resume work after the eight-week period will terminate service unless there is lack of work, illness, complication from pregnancy or some other valid reason, in which the case the employee will be required to notify her supervisor once a month, and this reason will then become the reason for absence on employment and payroll records.

In the event the absence following termination of pregnancy exceeds eight weeks due to reasons of health, the employee must furnish upon her return to work a statement from her physician indicating the reason for the absence. This statement will be forwarded to the Dispensary for review and will be filed in the employee's personnel folder.

Employees returning to work in less than eight weeks after termination of pregnancy are required to obtain a statement from their personal physician permitting the return to work. Approval of the Plant Physician is also required.

G.E. EXHIBIT No. 4
Par. 17, 304.43, CCH 'Employment Practices Guide,' 12-21-66.

Number 33–41
12-21-66 Decisions and Rulings 7413-21

[¶17,304.43] Denial of Salary continuation during pregnancy

Opinion letter of General Counsel, Equal Employment Opportunity Commission, October 17, 1966. Released December 9, 1966.

A company's group insurance program which covers hospital and medical expenses for the delivery of employees' children, but excludes from its long-term salary continuation program those disabilities which result from pregnancy and childbirth does not violate Title VII, inasmuch as, according to EEOC policy, treatment of illness or injury should not be equated with treatment of maternity.

Back reference– ¶1213.

This is in reply to your inquiry regarding a company's "salary continuation policy". According to your letter, the policy permits employees who become disabled for

long periods to be paid a salary by the company for six months during the period of disability. Should the employee remain disabled following that six month period, the insurance carrier then assumes the responsibility of paying one-half of the disabled employee's salary for a given period of time, depending upon the employee's length of service.

You further state that there are three exclusions, namely that the disability must not be:

1. A disability caused or contributed to by pregnancy, childbirth, miscarriage, or abortion.
2. A disability due to intentionally self-inflicted injuries.
3. A disability resulting from the commission by the employee of, or attempt to commit, an assault, batter, or felony.

The Company's group insurance plan does, however, cover the delivery of children and the employee's immediate hospital expenses resulting therefrom.

You have requested our opinion whether the above exclusion of pregnancy and child-birth as a disability under the long-term salary continuation plan would be in violation of Title VII of the Civil Rights Act of 1964.

In a recent opinion letter regarding pregnancy, we have stated, "The Commission policy in this area does not seek to compare an employer's treatment of illness or injury with his treatment of maternity since maternity is a temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees." Therefore, it is our opinion that according to the facts stated above, a company's group-insurance program which covers hospital

and medical expenses for the delivery of employees' children, but excludes from its long-term salary continuation program those disabilities which result from pregnancy and child-birth would not be in violation of Title VII.

GE EXHIBIT NO. 5 -
Par. 1219, CCH 'Employment Practices Guide,' 4-22-71.

.58 Discontinuation of Salary During Pregnancy.– Company's group insurance program which covers hospital and medical expenses for delivery of employees' children, but excludes from its long-term salary continuation program those disabilities which result from pregnancy and childbirth does not violate Act, inasmuch as, according to EEOC policy, treatment of illness or injury should not be equated with treatment of maternity.

GC Opinion, October 17, 1966

GE EXHIBIT NO. 7 -
G.E. Health Bulletin
re pregnancy leave,
issued 11/5/71

PREGNANCY

General

Pregnant employees at work must be considered in the same light as are all other employees, namely that they be physically and emotionally fit to efficiently

perform their assigned work without jeopardizing the health or safety of themselves or others.

Changes in Pregnancy

Certain changes occur in the physiologically normal pregnancy which may effect the capacity to work. The usual weight gain may at times lead to increased fatiguability. Clothing is often restricting and uncomfortable causing restlessness. The enlarging uterine mass compromises the return of lymph and blood from the lower extremities and, along with fluid retention, may cause swelling of the feet and ankles. Pressure on the bladder may lead to increased urinary frequency. The forward shift of the center of gravity can result in strain on the back muscles causing low back discomfort and further restlessness. Increased emotional lability is rather common. This may interfere with concentration at work.

Recommendations

The decision to permit pregnant employees to continue at work involves many considerations. These include; 1) the desire of the individual, 2) approval of the attending physician and concurrence by the General Electric physician, 3) maintenance of good health and well being, 4) appropriate and safe work assignment, and 5) continued efficient work performance. Because these factors vary from one employee to another, each case must be decided individually. Based upon the above considerations the following recommendations are made:

I. Employment Applicant

Pregnant applicants for employment will not be considered acceptable for work until after a reasonable period of convalescence following termination of pregnancy.

1. Pregnant employees must report the fact of pregnancy to the medical clinic (or to the supervisor in the absence of a medical facility) as soon as practical after the diagnosis is established. The employee should present a completed form (See Appendix 5.8) from the attending physician stating the expected date of delivery and granting permission for continued work, if desired.

2. The pregnant employee may elect to voluntarily discontinue working and have her status designated as "Illness-Pregnancy" which is treated the same as an absence due to illness for continuity of service purposes. During this period the employee will be covered by current rules and benefit plan provisions relating to such pregnancy absence. The employee will be expected to return to work within eight weeks following termination of pregnancy, unless she presents evidence that she is unable to return due to illness or complications from pregnancy. In this instance, "illness absence" would thereafter be come the reason for absence on employment and payroll records. If the child's condition necessitates the employee's continued presence at home, her service may be protected beyond eight weeks after termination of pregnancy only if a leave of absence is granted for such purpose.

3. Pregnant employees who elect to continue at work, and who have the approval of their attending physician, may do so providing the General Electric physician is satisfied (and so certifies) that the employee's health is satisfactory and that the job assignment requires no unusual physical demands or possesses no health hazards as a result of ex-

posure to toxic materials or harmful physical agents.

4. Pregnant employees who have elected to continue at work, and who have been certified, may thereafter elect at anytime to discontinue working and may be on "Illness-Pregnancy" status. Those pregnant employees who continue at work beyond the sixth month of pregnancy should have the approval of their attending physician and be followed closely by medical personnel to determine continued well being and job safety. Pregnant employees will of course be required to discontinue working and will be placed on "Pregnancy" status in cases where the attending or plant physician determines it is unwise to continue at work because of medical reasons, when suitable work is no longer available, and when through inefficient performance, the employee demonstrates inability to perform work satisfactorily. In any event, pregnant employees should discontinue working at least two weeks prior to the expected date of delivery so that the employee may prepare for her confinement and to avoid the complications of early delivery, precipitate labor or other events associated with childbirth.

G.E. EXHIBIT NO. 8

G.E. Health Bulletin re
Pregnancy Leave issued
5-5-72

CORPORATE MEDICAL OPERATION
NEW YORK, NEW YORK

HEALTH BULLETIN

Tab: 5
No.: 5.8
Issued: 5/5/72
Supersedes: 11/5/71

PREGNANCY

General

Pregnant employees at work must be considered in the same light as are all other employees, namely that they be physically and emotionally fit to efficiently perform their assigned work without jeopardizing the health or safety of themselves or others.

Changes in Pregnancy

Certain changes occur in the physiologically normal pregnancy which may effect the capacity to work. The usual weight gain may at times lead to increased fatiguability. Clothing is often restricting and uncomfortable causing restlessness. The enlarging uterine mass compromises the return of lymph and blood from the lower extremities and, along with fluid retention, may cause swelling of the feet and ankles. Pressure on the bladder may lead to increased urinary frequency. The forward shift of the center of gravity can result in strain on the back muscles causing low back discomfort and

further restlessness. Increased emotional liability is rather common. This may interfere with concentration at work.

Recommendations

The decision to permit pregnant employees to continue at work involves many considerations. These include: 1) the desire of the employee, 2) approval of the attending physician and concurrence by the General Electric physician, 3) maintenance of good health and well being, 4) appropriate and safe work assignment, and 5) continued efficient work performance. Because these factors vary from one employee to another, each case must be decided individually. Based upon the above considerations the following recommendations are made:

1. Pregnant employees must report the fact of pregnancy to the medical clinic (or to the supervisor in the absence of a medical facility) as soon as practical after the diagnosis is established. The employee should present a completed form (See Appendix 5.8) from the attending physician stating the expected date of delivery and granting permission for continued work, if desired.

2. The pregnant employee may elect to voluntarily discontinue working and have her status designated as "Illness-Pregnancy" which is treated the same as an absence due to illness for continuity of service purposes. During this period the employee will be covered by current rules and benefit plan provisions relating to such pregnancy absence. The employee will be expected to return to work within eight weeks following termination of pregnancy, unless she presents evidence that she is unable to return due to illness or complications from pregnancy. In this instance,

"illness absence" would thereafter become the reason for absence on employment and payroll records. If the child's condition necessitates the employee's continued presence at home, her service may be protected beyond eight weeks after termination of pregnancy only if a leave of absence is granted for such purpose.

3. Pregnant employees who elect to continue at work, and who have the approval of their attending physician, may do so providing the General Electric physician is satisfied that the employee's health is satisfactory and that the job assignment requires no unusual physical demands or possesses no health hazards as a result of exposure to toxic materials or harmful physical agents.

4. Pregnant employees who have elected to continue at work, and who have been certified, may thereafter elect at anytime to discontinue working and may be on "Illness-Pregnancy" status. Those pregnant employees who continue at work beyond the sixth month of pregnancy should have the approval of their attending physician and be followed closely by medical personnel to determine continued well being and job safety. Pregnant employees will of course be required to discontinue working and will be placed on "Pregnancy" status in cases where the attending or plant physician determines it is unwise to continue at work because of medical reasons, when suitable work is no longer available, and when through inefficient performance, the employee demonstrates inability to perform work satisfactorily. In any event, pregnant employees should discontinue working at

least two weeks prior to the expected date of delivery so that the employee may prepare for her confinement and to avoid the complications of early delivery, precipitate labor or other events associated with childbirth.

G.E. EXHIBIT NO. 10

Excerpt, Chapter IX, Broom and Selznick, "Sociology", (Harper & Row, 4th Edition).

SOCIOLOGY

A Text with Adapted Readings

LEONARD BROOM PHILIP SELZNICK

THE CASE OF THE G.E. BABIES

On January 14, 1953, General Electric announced that it would award five shares of its common stock to any employee who had a baby on October 15—the company's seventy-fifth anniversary. Originally the company said it expected about thirteen winners. It arrived at this figure by applying a daily U.S. birth rate to its own 226,000 employees. This computation actually yielded a prediction of fifteen births; but a G.E. public-relations man thought it might be nice to trim the figure to thirteen, the number of original G.E. investors. The mathematics suffered from more than public relations, however.

G.E. employees, since they include no children and no one over sixty-five, are obviously a much more fertile group than the population as a whole. When this fact sank in, a company statistician made a new assault on the problem. He estimated that the size of an average G.E. family was 4.2. This meant that the total number of people in the G.E. families was close to a million. Applying the crude annual birth rate to this group, and dividing by 365, he came up with a new prediction of seventy-two births on the big day.

As it turned out, there were not thirteen, fifteen, or seventy-two babies born to G.E. employees on October 15. There were 189.

Subtracting the company's highest expectation of seventy-two from 189 gives 117, "extra" babies. Where did G.E. go wrong? Well, among other things, the company made no allowance for the incentive provided by its own stock. This oversight, remarkable in a company that has had a lot to say about capitalist incentives, was apparently rectified by the employees. The latter not only enjoy having children, but it appears, they rather enjoy the idea of becoming capitalists. And they seem to have known a good thing. In a generally declining stock market, G.E. common stock rose during the pregnant months from 69 1/8 to 78 7/8.

Source: Reprinted from the January, 1954, issue of *Fortune* by Special Permission of the Editors; Copyright, Time, Inc.

* * *

WHERE DID G.E. GO WRONG?

They applied the wrong rate to the wrong group. They applied the crude birth rate to G.E. employees, assuming that only the *employees* would have babies. If the crude birth rate were to be used at all, it should have been applied to the

whole population of G.E. *families*, not just the workers but their wives, children, and other relatives. This is what they finally did when they included families in their calculations of the crude birth rate. But the crude birth rate requires a cross section of the total population, and they did not have one. Even the whole population of G.E. families is not representative of the whole population of the U.S. For instance, G.E. families contain an abnormally large proportion of individuals in the productive (and reproductive) years and few aged persons. The G.E. statistician also failed to consider: (1) the section of the country, (2) the size of the communities where the employees lived, (3) their income, (4) their education, and (5) their race, all of which affect the birth rate.

Could G.E. have done better? They could have made a closer approximation to the true number by applying age specific birth rates to the women of childbearing ages in G.E. employee families. This number could have been further refined by correcting for seasonal fluctuations in births. Corrections for the characteristics G.E. failed to consider would be far more difficult to make and, under the conditions noted below, pointless.

Because figures for the characteristics of the G.E. population are not available, a more refined estimate cannot be calculated. Probably, but not certainly (as *Fortune* assumes), the announcement of the award was an incentive. The influence of incentive could have been estimated and the quality of the prediction further improved by interviewing a sample of G.E. wives. Of course, G.E. could have eliminated the incentive factor entirely by announcing the award eight instead of ten months before October 15. As it was, the announcement may have been timed to create maximum motivation. And a number of births may have been induced hastened) by physicians.

There is at least one additional complication. Any estimate of a daily birth rate, even for a rather large population like the G.E. families, is subject to an additional source of error. Daily birth rates vary even more widely than seasonal or monthly birth rates. In 1950 U.S. registered crude birth rates ranged from 20.9 for the month of April to 25.5 for September. The shorter the time period, the greater the range of variation in birth rates (and the smaller the population, the greater the range of variation in birth rates). The changes of getting close to the mark on any particular day for any particular group are, therefore, not very good.

G.E. EXHIBIT NO. 12

Opinion Letters, Charles Duncan, General Counsel, Equal Employment Opportunity Commission, dated November 10, 1966 and November 15, 1966, re EEOC position on maternity as illness or injury. November 10, 1966

Gentlemen:

This is in reply to your letter inquiring whether a medical insurance plan and a disability benefit plan provided by a certain employer is in violation of Title VII of the Civil Rights Act of 1964.

You state under the employer's noncontributory medical insurance plan a maternity benefit is provided to cover the actual expenses (up to a stated maximum payment) incurred in cases of pregnancy of an employee's wife. The plan states

further that "maternity benefits are not available for female employees."

You call to our attention the opinion letter of June 29, 1966, of the Wage-Hour Administrator, which states, "The WHPC Divisions have determined that payments related to maternity which are made by an employer to an employee do not constitute remuneration for employment and are, therefore, beyond the scope of the Equal Pay Act." You also cite the last sentence of section 703(h) of Title VII, which provides:

> "It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of [the Equal Pay Act]."

You ask if you are correct in concluding that, therefore, the maternity benefit provisions cited above do not violate Title VII.

We do not agree that the determination of the Wage-Hour Administrator is controlling on this issue. The basic principles governing the relationship between Title VII and the Equal Pay Act are set forth in section 1604.7(a) of the Commission's regulations, 29 C.F.R. 1604.7(a). There it is stated:

> "Title VII requires that its provisions be harmonized with the Equal Pay Act * * * in order to avoid conflicting interpretations or requirements with respect to *situations to which both statutes are applicable.* Accordingly, the Commission interprets section 703(h) to mean that the standards of 'equal pay for equal work' set forth in the Equal Pay Act

for determining *what is unlawful discrimination in compensation* are applicable to Title VII. * * * (Emphasis added.)

Section 1604.7(b) states further that the Commission will make applicable to equal pay complaints filed under Title VII the relevant interpretations of the Wage-Hour Administrator. Section 1604.7, read as a whole, draws a clear distinction between those situations in which the Equal Pay Act is applicable and those in which it is inapplicable. The section expresses the Commission's intention to follow the Wage-Hour Administrator on questions of substance relevant to both statutes, but not on questions of jurisdiction which are peculiar to the Equal Pay Act. For example, an employee exempted from the coverage of the Equal Pay Act may nevertheless be entitled to the protection of Title VII against discrimination in compensation on account of sex. Consequently, an Administrator's opinion recognizing an exemption under the Equal Pay Act would not be applicable or relevant to Title VII. Similarly, where, as in the opinion you cite, the Administrator concludes that an asserted act of discrimination is not in violation of the Equal Pay Act because the discrimination is not with respect to compensation but with respect to other terms or conditions of employment, the opinion relates to a jurisdictional question peculiar to the Equal Pay Act. It is not relevant to the enforcement of Title VII because Title VII covers all terms and conditions of employment, including compensation. Consequently, section 1604.7(b) does not require that the opinion be adopted by the Commission.

It is our view that the maternity benefit provision you describe is in violation of Title VII. Where an employer pays maternity benefits for the wives of male employees he must pay such benefits for female employees.

Your second question is whether an employee disability benefit plan financed by both the employer and the employees may exclude from coverage disability resulting from the employee's pregnancy. You state that certain other forms of disability, e.g., disability arising in the course of employment, disability arising from the employee's misconduct, etc., are likewise excluded.

In a recent opinion letter regarding pregnancy we have stated, "The Commission policy in this area does not seek to compare an employer's treatment of illness or injury with his treatment of maternity, since maternity is a temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees." Therefore, an insurance or other benefit plan may simply exclude maternity as a covered risk, and such an exclusion would not in our view be discriminatory. However, where a plan pays maternity benefits to the wives of male employees, it assumes the risks of pregnancy, and we would regard it as discriminatory to assume such risks for the families of male employees, but not for female employees.

This is an opinion letter issued pursuant to 29 C.F.R. 1601. 30.

Sincerely yours,

Charles T. Duncan
General Counsel

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D. C. 20506

November 15, 1966

Gentlemen:

You state that under your collective bargaining agreement male and female employees are granted sick leave with pay. Female employees, however, are granted maternity leaves without pay; although their services are not terminated. You inquire whether this policy is in compliance with Title VII of the Civil Rights Act of 1964.

The Commission policy with respect to pregnancy does not seek to compare an employer's treatment of illness or injury with his treatment of maternity, since maternity is a temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees. Accordingly, we believe that to provide substantial equality of employment opportunity for both sexes, there must be special recognition for absence due to pregnancy, and for this reason we have stated that, generally speaking, a leave of absence should be granted for pregnancy whether or not it is granted for illness. On the other hand, we do not believe that an employer must provide the same fringe benefits for pregnancy as he provides for illness, and, consequently, it is our view that the policy you describe is not in violation of Title VII.

Sincerely yours,

Charles T. Duncan
General Counsel

G.E. EXHIBIT NO. 13

Cost Estimates re
Pregnancy Benefits

SHORT TERM DISABILITY BENEFITS AND MATERNITY COVERAGE U.S. GROUP INSURANCE COVERAGE AND SALARY CONTINUANCE

To provide all those employees covered for short term disability with maternity coverage on the same basis as any other disability:

Assuming the Average Duration of Maternity Benefits would be:	20 weeks	25 weeks	30 weeks
Total Maternity Benefits to be provided per year	$1,230 million	$1,538 million	$1,845 million
Total Maternity Benefits now provided per year	225 million	225 million	225 million
Increase in Total Benefits per year	1,005 million	1,313 million	1,620 million

Short Term Disability Benefits and Maternity Coverage

In developing the cost for maternity coverage on the same basis as any other disability, the following assumptions were used:

1. The annual number of births in the United States is approximately 3,250,000. (Source: U.S. Department of Health, Education, and Welfare, data published in the New York Times, March 2, 1973.)

2. About 40% of pregnant women are employed during pregnancy. (Source: U.S. Department of H.E.W., National Center for Health Statistics Report, Series 22, No. 7, September 1968, pg. 16.)

3. Approximately 63% of the employed civilian labor force has some form of employer-sponsored short term disability income protection. (Source: Health Insurance Institute, "Source Book of Health Insurance 1972-1973", pg. 25.)

4. The average short term disability benefit for covered women is about $75 per week.

5. It is estimated that of those women covered for short term disability benefits, 60% have maternity coverage with an average maximum duration of six weeks. (Source: Society of Actuaries Transactions 1972, No. 2, June 1972, pg. 190-202.)

G.E. EXHIBIT NO. 16 - Federal Personnel Manual, Revised July 1969, Subchapter 13, Maternity Leave.

Subchapter 13. Maternity Leave

13–1. DEFINITION

Maternity leave is a period of approved absence for incapacitation related to pregnancy and confinement. It is chargeable to sick leave or any combination of sick leave, annual leave, and leave without pay.

13–2. REGULATORY PROVISION

The leave regulations published by the Civil Service Commission require that "sick leave shall be granted to an employee . . . when the employee is incapacitated for the performance of duties by . . . pregnancy and confinement. . . ."

* * *

13–4. GUIDES FOR GRANTING MATERNITY LEAVE

* * *

f. Advance of sick leave. Requests for advance of sick leave for reasons of pregnancy and confinement should usually be denied.

* * *

630-30 Chapter 630. Absence and Leave

(4) When an agency finds that the duties of the employee require activity or exposure which may be injurious to her health, it should make a reasonable effort to detail or temporarily reassign her to other available work for which she is qualified. If another assignment is not available, and a medical certificate of the employee's incapacitation for the duties of her regular position is received, she should be placed on leave immediately.

G.E. EXHIBIT NO. 17 - Civil Service Commission Personnel Manual, June 1967

3–5. Granting Sick Leave in Advance of Accrual

a. In event of serious disability or ailment, and when the exigencies of the situation require it, a career or career-conditional employee may be granted sick leave in advance of its accrual up to a total of 30 days, under these conditions:

SUBCHAPTER 4. MATERNITY LEAVE

4-1. Employee Requests

An employee who applies for maternity leave must submit her request in writing indicating whether or not she intends to return to duty after delivery. She should attach thereto her physician's or practitioner's written certificate stating that the employee is pregnant, approximating the date on which she will be incapacitated for performance of her duties because of pregnancy, and stating the expected delivery date.

4-2. Amounts Granted

a. The amount of leave approved for maternity purposes depends on whether the employee intends to terminate her employment or return to duty after delivery.

b. *Employees Who Do Not Intend To Return.* An employee who has indicated that she does not intend to return to duty after delivery will be granted the use of any sick leave to her credit during the periods before and immediately after the actual delivery which can be supported by her physician's certificate. She will submit her resignation at the time she begins her sick leave. When she has used the sick leave approved, she will be separated from the rolls. If, however, she

has any accrued annual leave for which lump-sum payment cannot be made, she will be permitted to use it before separation.

c. *Employees Who Intend To Return.* An employee who intends to return to duty will be expected to work before delivery until she cannot adequately perform the duties of her job, or it is no longer safe for her to do so. She will be expected to return to duty as soon as she is physically fit. Time off will generally be approved for the period of incapacitation certified by the employee's physician. Initial authorization of absence shall not extend in any case beyond the *eighth calendar week* following the expected delivery date. The employee will be permitted to select the kinds of leave she wants to use and the sequence in which she will use them.

d. As a general rule, absences beyond eight weeks after delivery will not be approved. In an exceptional case, however, additional absences may be approved. An employee who desires additional leave must submit a written request to her supervisor stating her reasons. In deciding whether to approve the additional leave, the official having authority to approve leave shall give primary consideration to the Commission's interests and administrative needs.

e. *No advance annual leave will be granted for maternity purposes.*

G.E. EXHIBIT NO. 18 - National Labor Relations Board, Administrative Policies and Procedure Manual, Title 8, Leave and Attendance, February 1967, Section 3580, "Advance of Sick Leave" and Section 3680-3684, "Maternity Leave".

National Labor Relations Board

ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

Title 8
Leave and Attendance

NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

3580 Advance of Sick leave

3580.1 *Policy.* Advance of sick leave is a privilege granted to employees after full consideration for protecting the interests of the Government. This must be balanced by the equity of assisting an employee who, because of circumstances beyond his control, needs advanced sick leave due to serious incapacity. For employees who have had a year or more of service with the Agency, consideration must also be given to whether or not that employee has utilized his sick leave prudently.

3580.2 *Maximum limitation on advance of sick leave:* Sick leave not to exceed 240 hours may be advanced in cases of serious incapacity, regardless of whether the employee has annual leave to his credit. Advance leave of less than 8 hours will not be granted.

* * *

3580.3 *Responsibility of supervisors in recommending grant of advance of sick leave:* The employee's supervisor is responsible for determining that the reasons for absence warrant a recommendation for advance of sick leave.

10/66

Prior to the initiation of the recommendation, the following items should be carefully considered:

a. Conformance with regulations and Agency policy and procedures. (See 3580.5 for procedures.)

b. The request is fully warranted by the leave and attendance record of the employee and is properly supported by a medical certificate.

c. There is reasonable assurance that the employee will return to duty and the sick leave will be subsequently earned.

3580.4 *Sick leave may not be advanced when:*

a. The request for advance of sick leave is for pregnancy or confinement.

b. The absence is due to exposure to a contagious disease or to care for a person afflicted with a contagious disease.

* * *

10/66

f. It is known or considered likely that the employee will retire under provisions for age or optional retirement, or will be separated.

* * *

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3680-3688 Maternity Leave

3680 *Maternity Leave:* Maternity leave is a period of approved absence for *incapacitation* due to pregnancy and confinement.

3680.1 *Agency policy on maternity leave:*

a. Normally, leave for pregnancy and confinement will be granted for a period not to exceed 6 months. Physical incapacitation of the individual and the needs of the employing unit will be considered on any request for extension beyond the 6-month period. The total grant of leave will not exceed one year.

b. Request for maternity leave must be supported by a medical certificate giving anticipated date of delivery and estimated period of incapacitation.

c. Advanced sick leave will not be granted. (See 3580.4)

d. Maternity leave is chargeable to a combination of accumulated sick leave (14 weeks), annual and LWOP.

Sick leave will be approved only for the period of confinement, normally 6 weeks before the expected date of delivery and 8 weeks after delivery. When medical certificate (3682.1,b.) indicates a longer period, additional charge of sick leave may be proper. If there is any question, Personnel Branch may request the medical officer of the Agency in Washington to consult with the certifying physician on the employee's inability to perform her duties. In the field, the Regional Director or Officer in Charge may consult with the certifying physician. Sick leave will not be authorized for absence due solely to care of the infant.

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* * *

g. An employee who wishes to return to duty earlier than 8 weeks after delivery must furnish medical certificate attesting to the fact that she is physically able to perform her regular duties. (See 3570)

* * *

2 /67

3682.2 *Supervisor's responsibility:*

a. Upon either oral or written notification of pregnancy of an employee, the supervisor will review duties of the employee and assign tasks which would not be injurious to her health. Supervisor will alert authorizing official so that necessary staffing adjustments may be scheduled.

* * *

2/67

G.E. EXHIBIT NO. 19
Equal Employment Opportunity Commission, Memorandum to Employees, dated 12/20/72, re: "Advanced Sick Leave"

United States Government

MEMORANDUM

To: All Employees Date: December 20, 1972

From: Ronald B. Krueger /s/ **In reply refer to:**
Personnel Officer

Subject: Advanced Sick Leave

In view of the increasing number of requests for advance sick leave, the Personnel Division is providing you with the guidelines used to determine whether the employee's request for advance sick leave should be approved.

U.S. Civil Service Commission regulations indicate that advance sick leave should be advanced in cases of serious disability only. A serious disability would, in most instances, require a period of hospital confinement. With the above in mind, requests for advance sick leave will be approved providing the following conditions are met:

(a) necessity for hospital confinement;

(b) reasonable expectation that the person will recover from the disability and return to full duty status;

(c) reasonable cause to believe the employee will remain with the Federal government for a sufficient period to repay the advanced sick leave; and

(d) recommending official deems the granting of the advance sick leave to be in the best interest of the Federal Government and thereby grants approval.

Requests for approval of the advance sick leave are to be forwarded to the Personnel Division with a doctor's certificate attached. Failure to adhere to the above will result in the request for advance sick leave being denied.

Requests for advance of sick leave for reasons of pregnancy and confinement will be denied except in cases of serious disability regarding the maternity aspect. This is in keeping with U.S. Civil Service regulations.

Approved for circulation:

/s/ YVETTE D. BUTLER
Director, Office of Management

/s/ THOMAS G. COOF
Executive Director

BUY U.S. SAVINGS BONDS REGULARLY ON THE PAYROLL SAVINGS

G.E. EXHIBIT NO. 20

U.S. Department of Justice
Leave Policies and Regulations, March 8, 1963

Reprint includes:
Transmittal Sheet Nos. 1 thru 7

U. S. Department of Justice

LEAVE

Policies and Regulations

MEMO NO. 344

March 8, 1963

IV. MATERNITY LEAVE

A. *Granting Sick Leave* - An employee shall be granted sick leave to her credit for maternity purposes upon presentation of a statement from her physician certifying that she is incapacitated for duty.

* * *

Generally, the period for which sick leave may be granted begins not later than six weeks before the expected date of delivery and extends eight weeks beyond the date of delivery.

* * *

D. *Granting Advanced Sick Leave* - Employees may be granted advanced sick leave in cases of serious disability

or ailment. Except for those serving probationary or trial periods, such leave may be advanced to employees irrespective of whether they have annual leave to their credit. Probationary and trial period employees will be required to exhaust their annual leave before sick leave may be advanced. In addition, advanced sick leave may not be granted (1) when an employee is absent because a member of his family has a contagious disease (see 23 Comp. Gen. 789), (2) for pregnancy and confinement, or (3) to an employee who has filed application for disability retirement or who has signified his intention to resign because of disability.

* * *

C. *Maximum Amount of Leave* - The total initial authorization of leave (sick, annual, and leave without pay) for maternity purposes shall not exceed six months. An additional period not to exceed six months may be granted where required for reasons of health and the employee demonstrates positive intentions of returning to duty. Leave for other purposes, such as care of the child, may be granted at the discretion of the approving officer, in accordance with other provisions of this memorandum.

D. *Beginning Date of Maternity Leave* - Maternity leave may be requested at any time during pregnancy. However, each employee eligible for maternity leave will be required to enter upon such leave not later than six weeks prior to the expected date of confinement. Decision to permit an employee to work up to less than six weeks before the expected date of delivery should be made only after consultation with the Health Unit serving the office or the physician in charge of the case. Annual leave may be granted prior to the date sick leave commences only as provided in Section II, F-3, page 9, of these instructions.

E. *Temporary Employees* - Temporary employees as defined in Section I, D-13, page 3, may be granted accrued sick and annual leave. They may not be granted advanced sick or annual leave or leave without pay for maternity reasons.

F. *Resignation of Employees* - Sick leave shall be granted to an employee who intends to resign, subject to meeting the requirements stated in Section IV, A, pages 16 and 17. The employee will be entitled to all leave accrued to the close of the date she was last present for duty, as well as leave accrued for the period she is carried on leave with pay prior to resignation.

G. *Detail to Other Work* - When an employee reports her pregnancy, a determination should be made as to whether her duties or work environment involve exposure to hazards which can be reduced or eliminated. If the duties of the employee require activity or exposure which may be injurious to her health, a reasonable effort should be made to deatil her temporarily to other work for which she is qualified. The objective should be to provide her with gainful employment and make use of her skills for as long as she is not incapacitated for duty. If another assignment is not available and a medical certificate of the employee's incapacity for the duties of her regular position is received, she should be placed immediately on maternity leave.

G.E. EXHIBIT NO. 21 - Dept. of Agriculture, Forest Service Manual – Title 6100, Personnel Management (Oct. 1971, Amendment No. 59)

G.E. EXHIBIT NO. 21 - Dept. of Agriculture, Forest Service Manual – Title 6100, Personnel Management (Oct. 1971, Amendment No. 59)

6163.53 - *Maternity Leave.* Maternity leave is a period of approved absence for reasons related to pregnancy and confinement. It is chargeable to sick leave or any combination of sick leave, annual leave, and leave without pay.

* * *

1. *Usual Period of Maternity Leave.* The usual period of authorized maternity leave is approximately 14 weeks, beginning generally not later than 6 weeks before the expected date of delivery and extending 8 weeks beyond the date of delivery. Medical certification is required for sick leave.

* * *

3. *Advance of Sick Leave.* Requests for advance of sick leave for reason of pregnancy and confinement should usually be denied.

G.E. EXHIBIT NO. 22 – American Postal Workers Union Plan 1973 Brochure, BRI 41-206, U.S. Civil Service Commission.

As revised January 1, 1973

An Employee Organization Plan

American Postal Workers Union Plan 1973

See back cover for cost and enrollment information

U.S. Civil Service Commission
Bureau of Retirement, Insurance, and Occupational Health
Washington, D.C. 20415

Sponsored and Administered by the American Postal Workers Union, AFL–CIO

BRI 41-206
Jan. 1973

SUMMARY OF BENEFITS

Do not rely on this chart alone. It merely summarizes the benefits payable. Read the entire brochure to find what benefits are payable for each specific kind of expense and what expenses are not covered. All benefits payable are subject to the definitions, limitations, and exclusions in this brochure.

KINDS OF EXPENSES	HIGH OPTION PAYS	LOW OPTION PAYS
Room, Board, and Other Hospital Expenses	In full, for up to 365 days each calendar year	In full, for up to 120 days for each confinement *plus* 75% of additional expenses, up to a maximum additional payment by the Plan of $2,400
Surgical	In full, for reasonable and customary charges	Actual charges, up to amounts specified in Surgical Fee Schedule beginning on page 14
Other Medical	**For Doctors' Visits** Up to a total of $700 for *all* persons in a family enrollment, or up to $225 for a self only enrollment, each calendar year **For Emergency First Aid** Up to $75 for each accident per person **For Physical Therapy** 80% of charges **For Out-of-Hospital Diagnostic** Up to amounts specified in Schedule of Diagnostic Services **For Special Nursing Care** Up to $70 per day for up to 365 days for each confinement or illness, per person **For Drugs, Appliances, and Medical Equipment** 80% of charges, after first $30, each year, per person	**For Doctors' Visits** Up to a total of $400 for *all* persons in a family enrollment, or up to $150 for a self only enrollment, each calendar year **For Emergency First Aid** Up to $60 for each accident per person **For Out-of-Hospital Diagnostic** Up to $50 each calendar year per person, according to a fee schedule **For Drugs and Medicines** 80% of charges, after first $30, each year, per person
Maternity	Regular hospital benefits, plus up to $160 for delivery	Up to $250 for each pregnancy
Maximum Benefit	$100,000 per person, lifetime maximum	$50,000 per person, lifetime maximum

MATERNITY BENEFITS

PLAN PAYS	
HIGH OPTION	LOW OPTION
Regular hospital benefits as shown on page 4, plus up to $160 for charges of doctor who delivers child	Up to $250 For actual charges of hospital, obstetrician, and anesthetist

Subject to the definitions, exclusions, and limitations in this brochure, this Plan will pay Maternity Benefits, for actual reasonable and customary charges, up to the maximum shown above, due to each pregnancy which ends while the person is covered by this Plan, including childbirth, miscarriage, or abortion. These expenses include:

- Charges made by a hospital for care of the mother. Bassinet or nursery charges for days on which mother and child are both confined are considered maternity expenses of the mother and not expenses of the child
- Fees of the doctor who delivers the child, performs surgery for miscarriage, or treats the patient immediately following an abortion when surgery is not necessary
- Charges for the administration of anesthetics.

Maternity Benefits are paid *instead of* all other benefits.

WHO IS COVERED

Female employees and wives of male employees under family enrollments are covered for maternity benefits.

SEVERE COMPLICATIONS OF PREGNANCY

Severe complications of pregnancy are considered as illnesses and the Plan pays regular benefits, instead of Maternity Benefits, for such cases. For purposes of this benefit, complications of pregnancy include only the following:

- Operation for extrauterine pregnancy
- Intra-abdominal surgery after termination of pregnancy
- Pernicious vomiting
- Cesarean section
- Ectopic pregnancy
- Placenta previa
- Eclampsia and hypertensive toxemia
- Hepatitis, or acute yellow atrophy of pregnancy
- Pyelonephritis of pregnancy.
- Premature rupture of membranes

Miscarriages and abortions are not considered severe complications for purposes of this Plan.

There is no waiting period for Maternity Benefits

G.E. EXHIBIT NO. 23 - Administrative Instructions for the Office of Secretary of Defense, Joint Chiefs of Staff, Court of Military Appeals, Defense Security Assistance Agency, Number 67.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

Washington, D. C. 20301

ADMINISTRATION 27 May 1969

ADMINISTRATIVE INSTRUCTION NO. 67 (Revised)

SUBJECT: Leave Administration

References: (a) Administrative Instruction No. 49 (Revised), "Time, Attendance and Pay Procedures for Civilian Employees", dated April 12, 1966
(b) Federal Personnel Manual Supplement 990-2, "Hours of Duty, Pay and Leave Annotated"
(c) DoD Instruction 1424.1, subject "Ceiling on Lump-Sum Payments for Annual Leave", dated September 21, 1954
(d) DoD Instruction 1424.2, subject: "Administrative Excusing of Employees", dated May 4, 1960
(e) Administrative Instruction No. 67, "Leave Administration" dated April 12, 1967 (hereby cancelled)

I. PURPOSE

The purpose of this instruction is to reflect the policies and procedures to be used in the administration of leave.

II. POLICY

A. Leave will be administered on a uniform and equitable basis within the scope of applicable laws and regulations.

B. Employees will be given the opportunity to take full advantage of all entitled leave.

C. Prior to separation or resignation, employees will be permitted to use all current accrued annual leave which is in excess of the maximum balance authorized by law for lump-sum payments.

D. Maternity leave will be granted to cover the period during which an employee is medically certified as incapacitated for duty prior to confinement, and not to exceed eight weeks following delivery.

* * *

VI. SICK LEAVE

A. *Accruals.* All full-time employees with a 40-hour basic work week, regardless of their length of service, earn sick leave at the rate of four hours for each full bi-weekly pay period.

* * *

C. *Use.*

1. Sick leave becomes available for use at the end of the pay period in which it is earned. An employee is not required to complete the 90-day continuous period of service before he is eligible to use sick leave.

2. Sick leave is a qualified right of the employee so long as it is used for absences for the following reasons:

* * *

(a) When incapacitated for performance of duties by sickness, injury, pregnancy and confinement, or illness resulting from immunization or vaccinations (whether or not required as a condition of employment).

* * *

VII. MATERNITY LEAVE

Maternity leave is a period of approved absence because of pregnancy and confinement, and is chargeable to sick leave or a combination of sick leave, annual leave, and leave without pay.

A. *Approval.*

1. Sick leave requested earlier than six weeks before anticipated delivery date may be approved only if the employee is medically certified as incapacitated for duty. Annual leave or leave without pay to cover such earlier periods may be granted at the discretion of the supervisor.

2. In determining whether to grant additional leave beyond the end of the eighth week after delivery, consideration should be given to whether or not the employee still has sick leave to her credit and continues to be medically certified as incapacitated for duty. In the absence of medical certification, any approved leave beyond the end of the eighth week must be charged to annual leave or LWOP.

3. Sick leave ordinarily should not be advanced in maternity cases.

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G.E. EXHIBIT NO. 24 - Group Health Association 1973 Brochure, BRI 41-41, U.S. Civil Service Commission.

BRI 41-41
Jan. 1973

As revised January 1, 1973
Washington, D.C.

Group Health Association

1973

A Comprehensive Group-Practice Plan

U.S. Civil Service Commission
Bureau of Retirement, Insurance, and Occupational Health
Washington, D.C. 20415

See back cover for cost and enrollment information

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MATERNITY BENEFITS

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This Plan limits maternity benefits to persons covered under family enrollments.

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G.E. EXHIBIT NO. 25 - NALC Health Benefit Plan
1973 Brochure, BRI 41-51,
U.S. Civil Service Commission

BRI 41-51
Jan. 1973

As revised January 1, 1973

An Employee Organization Plan

NALC Health Benefit Plan

1973

U.S. Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D.C. 20415

Sponsored by the
National Association of
Letter Carriers—AFL-CIO

See back cover for cost and enrollment information

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MATERNITY BENEFITS

Subject to the definitions, limitations, and exclusions in this brochure, this Plan will pay **Maternity Benefits**, as shown below and without a waiting period, for *all* expenses (including prenatal and post partum) due to pregnancy, but onl for enrollees under *family enrollments* or enrollees' wives under *family enrollments*, and only for pregnancies whicl terminate while covered by the Plan:

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G.E. EXHIBIT NO. 26 - AFGE Health Benefit Plan
1973 Brochure, BRI 41-26,
U.S. Civil Service Commission

BRI 41-26
Jan. 1973

As revised January 1, 1973

An Employee Organization Plan

AFGE Health Benefit Plan

1973

U.S. Civil Service Commission
Bureau of Retirement, Insurance, and
Occupational Health
Washington, D.C. 20415

Sponsored by the
American Federation of
Government Employees

See back cover cost and enrol information

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SUMMARY OF BENEFITS

Do not rely on this chart alone.—It merely summarizes the benefits payable. Read the entire brochure to find what benefits are payable for each specific kind of expense and what expenses are not covered. All benefits are subject to the definitions, limitations, and exclusions set forth in this brochure.

KIND OF EXPENSES	HIGH OPTION PAYS	LOW OPTION PAYS
Hospital Inpatient	Each calendar year— Room and Board—in full for the first 200 days, plus 80% thereafter Other Hospital Charges—the first $350, plus 80% of charges thereafter	For up to 90 days per confinement— Room and Board—actual charge up to $30 per day Other Hospital Charges—the first $150, plus 75% of the balance
Hospital Outpatient	Actual charges up to $150 incurred within 48 hours after an accident or surgical operation	Actual charges up to $150 incurred within 48 hours after an accident or surgical operation
Surgical	80% of necessary and reasonable charges over the $50 Deductible	Actual charges up to amount specified in surgical schedule and after you pay the next $100, Plan pays 75% of any additional necessary and reasonable charges
Other Medical		75% of necessary and reasonable charges over the $100 Deductible
Maternity	Same benefits as for an illness or injury	$250 for normal delivery $500 for cesarean section $300 for abdominal operation for extrauterine pregnancy $125 for miscarriage
Maximum Benefits	$30,000 each person (automatic annual restoration of up to $1,000)	$10,000 each person (automatic annual restoration of up to $500)

MATERNITY BENEFITS

HIGH OPTION

PLAN PAYS—same benefits as for illness or injury, for hospital, physician, and other medical expenses

LOW OPTION

PLAN PAYS—$250 for normal delivery
$500 for cesarean section
$500 for abdominal operation for extrauterine pregnancy
$125 for miscarriage

The Plan pays actual charges up to the above amounts for all expenses (hospital, physician, anesthesia, and ambulance) incurred in connection with any one pregnancy, including complications

Bassinet or nursery charges on days on which mother and child are both confined are considered hospital room and board expenses of the mother and not expenses of the child. All other expenses of the newborn child will be considered his own and handled as a separate claim.

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WHO IS COVERED

Female employees under family enrollments, and employees' wives under family enrollments.

Under the ***High Option Only***, in cases of severe complications of pregnancy which involve a serious threat to the mother's health as determined by the Plan, benefits will be paid for the expenses of a female employee who is enrolled for self only, but the amount payable is reduced by $250.

Maternity benefits are payable only for pregnancies ending while covered by this Plan